

By the same Author

THE PRINCIPLE OF OFFICIAL
INDEPENDENCE

THE CIVIL SERVICE OF CANADA

CONSTITUTIONAL ISSUES IN CANADA

1900-1931

EDITED BY

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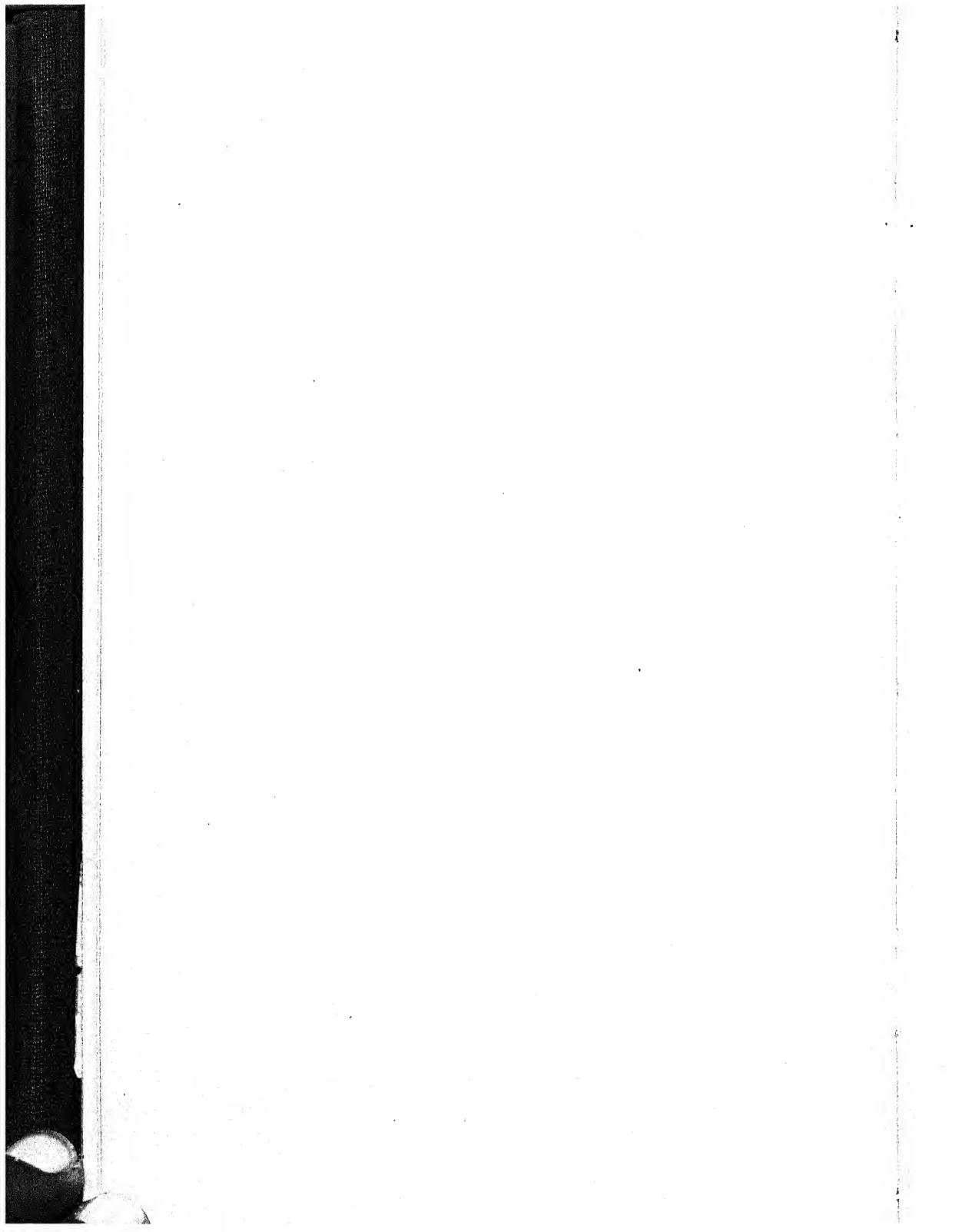
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To
WALTER C. MURRAY
PRESIDENT OF THE
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PREFACE

CANADIAN government, not only abroad but at home, is almost an unknown subject; and one reason for its neglect is the great labour of obtaining the information. No text-book has as yet been written; and most inquirers are naturally reluctant to conduct an arduous search through the original sources. This book is designed to overcome to some extent the latter difficulty by making the raw material for a study of Canadian government more accessible both to the layman and to the university student.

The quantity of material available is very large, and it is necessary to set rather arbitrary limits when making a selection. I have therefore confined my subject to the Dominion field, omitting the provincial and municipal governments, and have remained, except in a few rare instances, within the last thirty-one years. The original intention was to devote a chapter to the development in imperial and foreign relations, but the documents proved to be so numerous that they have been held over for a separate book. My own comment has been restricted to a few introductory notes at the beginning of each chapter and to an explanation here and there when the extract was in need of a setting. The sources used are of two kinds: official documents, and newspapers and periodicals. The former are, of course, indispensable, but if placed by themselves are apt to be both inadequate and stodgy. The extracts from the press give a deeper insight into many of the formal documents, enable many of the incidents to be treated topically, yield information which is often unobtainable elsewhere, and help to lighten the dullness of the blue books.

I wish to make my acknowledgement to the newspapers, periodicals, and authors for the free use which I have made of their material, and for the generous permission to republish it. More specific acknowledgement is attached to each extract in the body of the text.

I should like to thank all those who have helped me, and to mention especially the names of Mr. John W. Dafoe, Professor Frank H. Underhill, and Professor Robert A. MacKay—all of whom have made many valuable suggestions. The staff of the Parliamentary Library, Ottawa,

have been, without exception, most courteous and helpful in aiding me in my work of collecting material. I wish to thank also the University of Saskatchewan for granting the leave of absence which has enabled me to complete the book at this time.

R. MacG. D.

UNIVERSITY OF SASKATCHEWAN

June, 1932.

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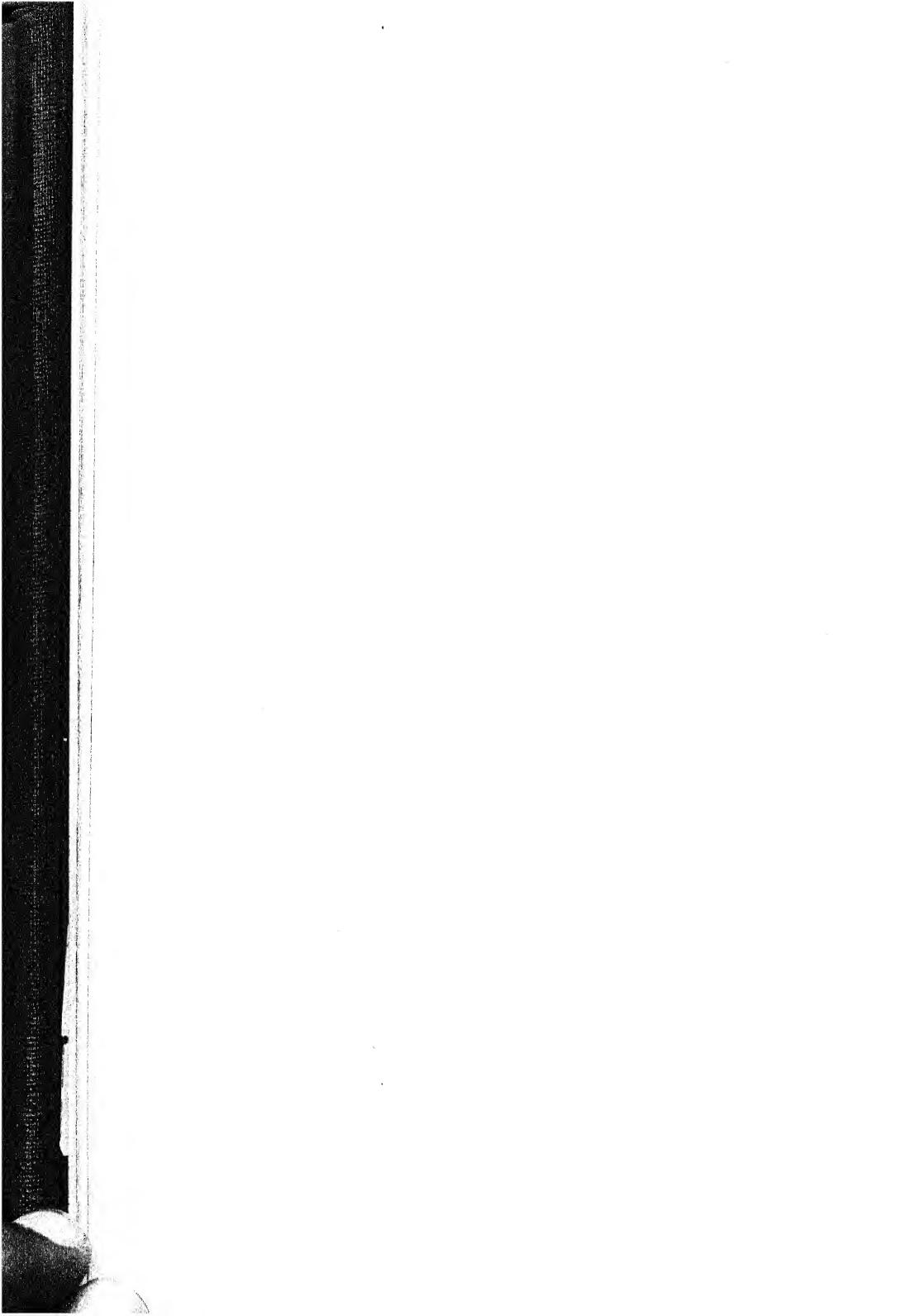
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CHAPTER ONE
THE CONSTITUTION



THE CONSTITUTION

'Well, in *our* country,' said Alice, still panting a little, 'you'd generally get to somewhere else—if you ran very fast for a long time as we've been doing.'

'A slow sort of country!' said the Queen. 'Now, *here*, you see, it takes all the running *you* can do, to keep in the same place. If you want to get somewhere else, you must run at least twice as fast as that!'—*Through the Looking-Glass*.

THE Constitution of Canada, like that of most countries to-day, is nominally a written one, viz. the British North America Act, 1867, and its amendments. This, however, forms only a part; and to ascertain some of the most important facts about Canadian government, such as those concerning the executive, the relations of the executive to the legislature, the political parties, the interpretation placed on the written constitution itself, one must fall back on the informal or unwritten constitution which is composed of many diverse elements—federal and provincial legislation, usage, precedent, judicial decisions, &c. (Section I.)

A study of the development of the Constitution, therefore, must include not only changes which are made in the British North America Act, but also those which occur in the equally important but more elusive conventions, judgements, and laws. In recent years, however, circumstances have conspired to place the processes of formal amendment in the forefront of political discussion. This generation has in effect been punished by the virtues of its predecessor; for it finds itself saddled with the most archaic system of amendment in the Dominions solely because its fathers happened to be progressive enough to adopt a national constitution somewhat in advance of their time. This condition of constitutional inferiority was unsatisfactory enough before the World War, but the recent vogue of enlarging the national status has emphasized the futility of pretending to have self-government while such a fundamental matter remains unchanged. Yet so deep is local jealousy, so suspicious the racial and religious minorities, so powerful the centrifugal forces in all the provinces, that all attempts to realize the national ambitions by an alteration in the amending process have thus far been unsuccessful. (Section II (A) (B).)

The British North America Act, 1867, has been amended eleven times. Four of these were temporary (e.g. several

amendments which gave certain loans priority in reference to the Consolidated Revenue Fund); three were largely declaratory and were passed 'to remove certain doubts' in the Act; and only four were genuine amendments, viz. those of 1886, 1907, 1915, and 1930. These are the formal changes, notable beyond a doubt, but deriving an undue prestige from their concreteness, their ceremonious passage through the Canadian and British Parliaments, their undisputed hall-mark of constitutional purity. The informal changes have come about more quietly, and have often been unheralded and even unobserved. A new precedent, a resolution of an Imperial Conference, a decision of the Judicial Committee of the Privy Council, a venture in party organization—developments of this kind have frequently proved to be of far greater importance than the more pretentious legal amendments to the British North America Act. (Section II (C).)

I

THE UNWRITTEN CONSTITUTION

'OUR CONSTITUTION OUTSIDE THE BRITISH NORTH AMERICA ACT'

An Address by C. A. Stuart to the Saskatchewan Bar Association

(*Canadian Bar Review*, 1925, pp. 70-8.)

I think there is a popular impression that (the British North America Act) was a great extension of colonial legislative power. Of course a moment's thought will enable you to realize that its importance lies not so much in any extension, but in a division and distribution of legislative power. When we remember that by section 91 the residuary legislative power is left to the federal Parliament, and that by that section the federal Parliament is given power to make laws generally for the peace, order, and good government of Canada, and when we compare that phrase with the language used long before, in 1748, 1773, and 1784 in the commissions to the Governors who were by an exercise of the Royal prerogative authorized to set up local legislatures, and when we compare it with the language of the Constitutional Act of 1791 and the language of the Union Act of 1840, we at once realize that there has been, in form, practically no extension of legislative power by the British North America Act. Even before confederation the Legislative Assemblies could pass laws for the peace, order, and good government of the colonies; and if we examine the statutes of the Imperial Parliament back as far as you like, I think it would surprise you to find how very very few there are, except constitutional ones, which have been passed and which could not be repealed by either our federal or our provincial legislatures. Such a statute as that abolishing slavery, I suppose, is one example, a statute which no one would think of repealing. It is for this reason, I repeat, that the importance of the British North America Act lies not in the extension of power, but in its division and distribution so as to constitute a federal system and to make possible the uniting of the scattered provinces. . . . Nearly everything I shall say, in so far as it is a question of law at all, will be a perfect commonplace, and I realize that quite well. But I shall simply use the matters I refer to as illustrations to emphasize the importance of things in our Constitution that are not contained in the British North America Act.

First let me speak of something which of course will appear to you as a commonplace. Our Cabinet system, our executive government, as every one knows, is based on an entirely different idea from that which the American Constitution presents . . . the law upon which this system rests is not found in the British North America Act. More than that, it is not, I venture to suggest, sufficient to say, 'Oh, that is

one of the conventions, that is the British system which we have adopted'. The fact is that the system, if I am right, and I think I am, is made possible, not by any mere convention, not by the British North America Act, not by any Imperial statute, but by statutes passed by the Canadian Parliaments themselves, both federal and provincial. The House of Commons Act—the Federal Act—the Legislative Assembly Acts of the provincial legislatures contain the provisions which, first, prevent persons holding remunerative offices under the Crown from sitting in the House, prevent a flood of office holders becoming elected to the popular House, and then, by an exception effective under certain conditions, permit the great officers of State who are members of the Privy Council or Executive Council, that is of the Cabinet, nevertheless to be so elected and to sit and to vote; and it is those statutes which make possible and effective our Canadian system of Cabinet government. . . .

Let me proceed to another subject. If we interpret the expression 'the Canadian Constitution' as covering the whole system of public law establishing throughout Canada the various Government authorities, legislative, judicial, and executive, both federal and provincial, it will at once be recognized that much of it lies outside the British North America Act. In the United States a sharp distinction is drawn between the Constitution of the United States and the State Constitutions. We draw, I think, no such sharp distinctions in Canada. How seldom, for instance, you ever hear anybody speak of the Constitution of Saskatchewan, or of the Constitution of the province of Nova Scotia. The reason for this obviously lies in the fact that the State Constitutions all have the same origin—a vote of the people of the State upon a very elaborately drawn document. But if we search for something which you might call the Provincial Constitutions, we find the utmost variety in their origin. In form they never come by a vote of the people, as it were from below, but by way of the granting of powers by some authority, as it were, from above. The Constitutions of Nova Scotia and New Brunswick and Prince Edward Island are not the creatures of any statute; they rest for their ultimate origin, as you will remember, upon the same basis as the British Parliament does, namely, upon an exercise of the prerogative power of the King through his Governor in calling them into existence, by the measures to which I have referred, in 1748, 1773, and 1784. The British North America Act left those Constitutions as they were with this exception, that it transferred from the legislative authority then existing in those provinces certain powers which it put into the federal legislature. The Constitution of British Columbia rests in its ultimate origin upon an Order-in-Council of Queen Victoria in 1858 establishing a Legislative Council for British Columbia; upon an amendment to it, in 1866, I think—some time there—making it partially elective; and upon an Ordinance of the Legislative Council itself passed under the

authority of the Colonial Laws Validity Act, turning itself into a completely elective Assembly just before British Columbia entered confederation in 1871. The Prairie Provinces, I need only say, rest their Constitutions upon enactments of the Parliament of Canada, and ultimately of course upon the British North America Act. The original Constitutions of only two provinces are found in the British North America Act, namely Ontario and Quebec, this being due to concurrent division of the old province of Canada into two. If we look on everything in the British North America Act as part of the Constitution of Canada in the wide sense in which I have suggested the words are popularly known, it includes only two provincial Constitutions. The Constitutions, if such we can call them, of seven of the provinces are entirely outside the British North America Act. And so it seems to be clear that for those two portions of our Constitution, the law on which our Cabinet system rests, and the Constitution of seven of our provinces, we have to go outside of the Act of 1867.

Now may I come to a much more important part of our Constitution, the mention of which in the British North America Act is so meagre as to be reduced, nearly, although not quite, to the vanishing-point, and which is nevertheless, I think, pregnant with the gravest possible problems in the future?

The ordinary functions of government are divided into the legislative, the judicial, and the executive. In these modern days of extending governmental activities it is surely undebatable that the executive power at least does not yield in importance, even if it does not surpass, that of the other two. We have in the British North America Act a good many provisions about the legislative power. We have provisions for the establishment of the judicial power. But did it ever strike you how extremely meagre the references in the British North America Act are to that enormous part of our constitutional system, the executive power? And what two meagre references there are there to the establishment of the executive power are simply confirmatory of the common law. Section 9 says that the executive power in Canada shall continue and be vested in the Queen. I think it is section 12 (15) which says that the command of the military and naval forces in Canada shall continue and be vested in the Queen. That is practically all. And it is here, I think, that we discover that part of our Constitution which rests not upon the British North America Act but upon the common law, and upon that part of it which deals with the King's prerogative. I do not know whether it is necessary to remind you that even the office of Governor-General is not established by the British North America Act. The Governor-General is referred to there, but the office was not created until 1878, by letters patent, by an exercise of the prerogative power of the King. There had been Governors-General appointed from time to time individually as the necessity arose; and there had been Governors-General long before

confederation—many times. There had been a unity to some extent for executive purposes, because of the position of the King as the executive power throughout all his dominions. . . . I think we shall have to look more habitually than we do upon the King and the Kingship as part of our Constitution, as some one and something that belongs to us very intimately and is really part of our constitutional life. May I give you an example—two examples—in which I think, with all respect, that Canadian courts appear to have lost the right road because of forgetfulness of, or lack of familiarity with, the King and his prerogatives? I think more than those two could be found. I will mention only two, two cases which no doubt are familiar to you. In the case of *re Cain and Gilhula*, about 1905 or 1906 Appeal Cases, Mr. Justice Anglin, then a Judge of the High Court of Ontario, had to decide, or thought he had to decide, upon the constitutionality of the Alien Labor Act, by which a Canadian Minister of the Crown was given power to expel by force an alien brought into Canada under contract. That very learned Judge considered the question, as you will see from his judgement, entirely from the point of view of a problem in physics, that is apparently whether by an Act of expulsive power, force was not being exercised beyond the Canadian boundary, and whether the Parliament of Canada could constitutionally authorize the use of such force. There was an appeal *per saltum* to the Judicial Committee, and they, being a prerogative body themselves, and being, therefore, more familiar with the King's prerogative, simply settled the matter by saying that the King, by virtue of his prerogative, has power at any time to expel an alien from his realm, and the Canadian Act simply stated by what Minister that power should be exercised and under what conditions they thought it advisable to do so. There, the King's prerogative settled the matter.

Again—and I think I am right in making this reference—in the celebrated companies case, the *Bonanza Creek* mining case, which deals, you will remember, with the right of a province to incorporate companies with a capacity of doing business outside of the province. Viscount Haldane rested a great part of his decision upon a recourse to the ancient prerogative power of the King to grant a charter or letters patent erecting a corporation; and I think this was an aspect of the matter, if I remember correctly, which was almost entirely, if not absolutely, overlooked in the courts below. These are only two out of a number of instances in which a consideration of the common law of the King's prerogative has already in the past been decisive of constitutional problems. . . .

You are well aware of the discussions that are going on in public affairs to-day about 'Canada's status' . . . we can say this with absolute certainty, that Canada is a 'state' of some kind, that the Dominion of Canada is a politically-organized state with governmental institutions. And there is also no doubt about this, that the head of that State,

according to the common law part of our Constitution, constitutionally is the King. I want to suggest to you that what you see going on now . . . these things show that the period upon which we are entering now is a period of a new struggle—perhaps I should not use the word ‘struggle’—but, a very kindly, brotherly, gentlemanly hedging or manœuvring for position over the control of the King’s prerogative with respect to our external affairs. The King is far away from us personally; he cannot be in Ottawa at one time and in Wellington another day and in London another day; so we do not get very close to the idea of the King being officially the head of our Government—and of course he is represented here by some one else. But I want to suggest to you this—and although I may appear to be going a little closer to public affairs I am not going to express any opinion as to what ought to be done or what should not; but what of the common law prerogative power of the King in regard to external affairs, the power to declare war? If you look at the proclamations printed in the Dominion Statutes of 1914, when war was declared, you will find that it was announced that war was declared between His Majesty the King and the German Emperor; it did not say between Great Britain and Germany—not at first; it did later on. The power of declaring war, the power of making peace, is another of the King’s prerogatives. The power of making treaties is another of the King’s common law prerogatives. The power of appointing ambassadors is another of the King’s common law prerogatives. . . . Now what I want to suggest to you is this, that if the King is controlled in the exercise of that prerogative power in certain things by Dominion Legislatures and Dominion Cabinets, and he makes such a treaty as that and says practically to the foreign government with whom he makes the treaty, ‘I am making this solely in my capacity as the head of the Canadian State, and on behalf of my Canadian subjects’; and if Australia made a treaty with Japan, between the King as head of the Commonwealth of Australia, and Japan, and the King said, ‘I am making this treaty with Japan solely in my capacity as head of the Australian Commonwealth and on behalf of my Australian subjects’; . . . I want to suggest to you that we are getting very very near saying that the King has one capacity as head of the Canadian State, the Dominion of Canada, that he has another capacity as head of the Commonwealth of Australia, and another capacity as head of the United Kingdom of Great Britain. And even if you do retain in theory the idea that there is only one Crown and one King, you are getting very near saying that there is one man, one King, occupying and fulfilling different capacities—in effect occupying different thrones. I am not going to develop that any further, and I have only referred to it for the purpose of emphasizing, if I may, the extreme importance of that part of our Constitution which is not contained in the British North America Act, its extreme importance in the difficult constitutional problems that are going to come up before us in the future.

II

CONSTITUTIONAL AMENDMENT AND DEVELOPMENT

A. PROCEDURE IN MAKING PAST AMENDMENTS

DEBATE ON THE AMENDMENT OF 1875

(*Canadian House of Commons Debates*, April 8, 1876, pp. 1140-3.)

Mr. KIRKPATRICK wished to call attention to a matter of importance. They had been under the impression that they lived in a country which had the benefit of a responsible Government, and that this Parliament was capable of enacting the laws required by the people of Canada. It appeared, however, from a return brought down by the Government, that they had gone back on the principles they had previously professed. He found that on the 18th of February 1875, when this House was in session, the Government had passed a Minute in Council recommending that the Imperial Government should be asked to pass an Act to amend the 'British North America Act', and to remove all doubts as to the construction of one of its sections. The Imperial Government had accordingly passed an Act repealing the section in question—sec. 18—and re-enacting another in lieu thereof, thereby legislating with regard to this country without any wish to that effect being expressed by this Parliament. This was a most extraordinary assumption of power on the part of the hon. gentleman opposite. This was not the first time that such a matter was brought up before the House. In 1871, when doubt was entertained as to the power of this Parliament to pass the Manitoba Act, the Government of that day thought fit to assume to themselves the same power that had been assumed by the present Ministry. When attention was called to this fact, the Administration, led by Sir George Cartier, in the absence of the right hon. member for Kingston, was compelled to acknowledge that they had done wrong, and to ask the House to pass an Address to Her Majesty, asking for such legislation as was in question. On March 23rd, 1871, the present Minister of Justice (Hon. Edward Blake) in his usual able manner, said:

He proposed, in these resolutions, to establish the principle that legislation on matters affecting this country should only be undertaken, by the Imperial Government, when sought for by the people of this country, through their representatives. This principle became of still greater consequence when the legislation sought for was of a character which would alter in a material point the compact upon which the union itself was formed—which violated, in its most important ingredient, the question of the distribution of power—to reintroduce the former evils from which the people of old Canada suffered, and which led to the introduction of the Constitution under which we now live. Not only that, but that it should be done at the instance of a Minister of the Crown, when there was nothing

to prevent them from asking the people of this country, through their representatives, what change, if any, should be made in the constitution of the country. That a Minister of the Crown under such circumstances should have ventured to apply to the Home Government, and should have sent home a draft of a Bill which they asked Earl Kimberley to make law, was without precedent, without parallel, without excuse, without palliation. He asked the House to agree that it was their duty to take care that they should determine what legislation the Imperial Parliament be asked to enact on their behalf. Hon. gentlemen opposite might say that the sense of the Parliament of Canada had already been taken on the Bill.

Sir GEORGE E. CARTIER: Hear! Hear!

Hon. Mr. BLAKE thought that was the paltry evasion they would make, but he would tell them that the draft sent to England went far beyond the Manitoba Bill.

The question was whether the people were prepared to surrender into the hands of the Government of the day, that power which the Government of the day was assuming it possessed—the power to ask the Imperial Parliament to make laws for us; or whether the House did not think that every sense of duty called upon them to determine that their sense—that was the sense of the people—was to be taken upon, and was to form the basis of that Imperial legislation.

Sir ALEXANDER T. GALT spoke in the same strain, and thought that the Government, before taking the vote, should consider whether it would not be better to decide that for all time to come, no change should be made in the British North America Act, except in the usual approved mode of address to the Queen.

Hon. Mr. HOLTON had remarked that, if the Government could take such action with reference to an unimportant measure, there was no reason why this could not be done with regard to the most important.

Mr. Speaker (who then had a seat on the floor of this House) had expressed his views in his usual trenchant manner, and had ably indicated the right of the House to ask for any legislation which was to be undertaken.

Hon. Mr. HOLTON then moved, seconded by Hon. Alexander Mackenzie, 'And this House is of opinion that no changes in the provisions of the British North America Act should be sought for by the Executive Government without the previous assent of the Parliament of this Dominion'.

The vote was: Yeas 136; Nays none.

If the action that the Government had taken were permitted with reference to unimportant matters, the power might be assumed in regard to questions of extreme importance to the country. It was to be remembered that Parliament was actually in session when this violation of the Constitution occurred. They had read for the first time this day a Bill sent down from the Senate, to enable witnesses to be examined on oath before both Houses of Parliament. In 1873 Parliament passed an Act to enable Committees of both Houses to administer oaths to witnesses; and it was disallowed, thus ceasing to be law. Yet in this Act they actually found that the Imperial Parliament was legislating for Canada. He would like to learn the opinion of

the Minister of Justice regarding this matter. They had gone further, and added this clause:

The Act of the Parliament of Canada, passed in the 31st year of the reign of Her Majesty, Chap. 24, entitled, An Act to provide for oaths to witnesses being administered in certain cases for the purpose of either House of Parliament, shall be deemed to be valid, and to have been valid as from the date in which the Royal assent was given thereto by the Governor-General of the Dominion of Canada.

The Imperial Parliament had no right to legislate in this manner, without the previous assent of the Parliament of Canada. In order that some record might be had of this circumstance, he moved, seconded by Mr. Bowell:

That it appears from papers laid before this House, that the Executive Government by Order in Council, passed on the 18th of February, 1875, while this House was in Session, recommending the passage of an Imperial Act, to remove all doubts as to the right of the Parliament of this Dominion to possess the power of passing an Act, providing for the examination of witnesses on oath, by members of the Senate and the House of Commons;

That in pursuance of such recommendation, the Imperial Parliament passed an Act, Chap. 38, Vic. 38 and 39, whereby section 18 of the British North America Act of 1867 was repealed, and another section was substituted for the section which was repealed;

That this House on the 27th of March, 1871, on motion of Hon. L. H. Holton, and seconded by the Hon. A. Mackenzie, had resolved as follows: 'And this House is of opinion, that no change in the provisions of the British North America Act should be sought for by the Executive Government without the previous assent of the Parliament of this Dominion; that the previous assent of the Parliament of Canada to the change in the provisions of the British North America Act sought for by the Order in Council as aforesaid, was not obtained; and that this House regrets that any Imperial legislation affecting the British North America Act of 1867 should have been sought by the Executive Government without the previous assent of the Parliament of Canada expressed in the usual manner by addresses from both Houses of Parliament to Her Most Gracious Majesty the Queen'.

Hon. Mr. MACKENZIE (Prime Minister) said as to the general principle enunciated by the hon. gentleman, of course he gave his entire assent to it, but there was a great difference between the two cases cited. The proceedings of a former Parliament were entirely different to those connected with this motion; in that case Parliament had expressed its opinion in a most deliberate manner on the passing of an Act, the legality of which was regarded as doubtful. But this was not a change in the sense the hon. gentleman had referred to. It was adding to the powers that Parliament possessed instead of changing any powers they had. The position then was that the Imperial Government were simply asked to implement an agreement to which both Houses of Parliament had unanimously come and which it was

decided they had not the power to come to. Therefore it was simply legalizing their previous action. It might have been better even then to have proceeded by address. And he admitted frankly it should be so whenever a change was wanted. If the hon. gentleman pressed his motion they could only say they must treat it in the usual way as one that seemed to be entirely uncalled for.

Mr. KIRKPATRICK said as the hon. gentlemen had admitted that they had done wrong and were sorry for it, he would withdraw his motion as his object had been accomplished by bringing the matter before the House.

Mr. BOWELL objected to the withdrawal of the motion. He thought it was well to consider the position of the present Minister of Justice and the present Premier on this subject when they were on the other side of the House. They did not now appear to be so anxious to carry out the principles they advocated then. He could not see that any distinction could be drawn between the positions in which the hon. Premier had placed this question. He said that the Imperial Parliament had only made law that which was not law and which was *ultra vires* in its character. Therefore, they asked the Imperial Parliament, without the consent of this Parliament, to make that law which they had no right to make law.

Hon. Mr. MACKENZIE: No!

Mr. BOWELL said it would not have been law unless this course had been taken, and it was conceding the point that the Imperial Government had a right to legislate for Canada.

Hon. Mr. BLAKE said the Act in question was not referred to the Minute in Council, and no recommendation was made by this Government with regard to the Senate Bill for the legalization of oaths.

Sir JOHN A. MACDONALD (Leader of the Opposition) deprecated any infringement upon the provisions of the British North America Act in a manner which would interfere with the rights of the different provinces of the Dominion. He believed, however, that there were occasions when this legislature might fairly address Her Majesty in regard to Bills, the validity of which were questioned, without reference to the provinces, but with the greatest circumspection.

Hon. Mr. BLAKE pointed out that they had a common object in this matter, and suggested that it would be more advisable to withdraw the motion than to allow it to be lost on a division.

Hon. Mr. BLANCHET said the design of the Imperial Act was to increase the power of the Dominion Parliament, and it was in the increase of power that he saw the danger. For instance, if the Dominion Government passed an Order in Council asking the Imperial Government to give them power to deal with questions of education which were within the purview of the provincial legislatures, what would the people of the provinces say?

THE CONSTITUTION

Hon. Mr. MACKENZIE: I admit the danger of it in relation to the provinces, but this was not of that nature at all. . . .

The motion was accordingly withdrawn.

B. THE AMENDING PROCESS TO-DAY

I. DEBATE ON METHODS OF AMENDMENT

(*Canadian House of Commons Debates*, February 18, 19, 1925,
pp. 297-300, 335-7.)

Hon. ERNEST LAPOINTE (Minister of Justice): Any proposal affecting the Constitution of Canada is by its nature of considerable importance, and the mere fact that such an experienced politician as my hon. friend from York (Mr. Maclean) has fathered this resolution is a strong indication that the subject-matter of this resolution attracts a substantial measure of public attention. I desire merely to point out some of the difficulties which are in the way of the proposal submitted by my hon. friend. . . .

There were many obstacles in the way of achieving confederation. Everybody who knows something of the history of Canada knows what some at least of those obstacles were. The country was on the verge of civil strife. During the two years which preceded the Quebec Resolutions, not less than four Cabinets succeeded each other at the head of the affairs of Canada. The provinces got together; they tried to effect an understanding and they effected one. In the language of Sir John A. Macdonald, the very pact of confederation bears on its face all the marks of a compromise. The provinces relinquished some of the powers which were theirs and they retained for themselves other powers. The powers which they relinquished they relinquished subject to conditions which were put into confederation, some of those conditions being more or less important, others essential, and without such conditions confederation would not have taken place. They tried to combine federal strength with local freedom of action. Everything that was private, domestic, home rule, the provinces kept to themselves, and they saw to it that their powers in that regard should never be interfered with. It is to be noted that in the British North America Act they have the right to amend those provisions which concern their own Constitution, except as regards the office of the Lieutenant-Governor. Not so in the case of any of the provisions concerning the federal Parliament; and there were reasons for that. If confederation was a pact, an agreement, is it possible for one of the parties to the agreement, or rather for the body which resulted from the agreement, to amend, to alter the conditions of that pact without consulting and without securing the consent of the parties to the original agreement?

. . . As regards the United States as well as Australia, New Zealand, and South Africa, they all agreed at the time of the enactment of the

statute creating their Constitution that they would have the right to alter it. They possess that right because it was made one of the conditions of the statute constituting them a State. Not so with Canada, because there were special conditions and difficulties in the way. I ask my hon. friend this question. Confederation was achieved and the new Parliament was opened in 1867. Does he believe that two years afterwards, in 1869, for instance, this Parliament could have fairly and reasonably amended the British North America Act or have asked the Imperial Parliament to amend it without the consent of the four original provinces? Could he fairly say that that could have been done two years after the opening of this Parliament? If it could not be done at that time, could it be done twenty-five years afterwards, or even fifty years afterwards, without the consent of the contracting parties in the pact of confederation?

I want to convey to the House one or two points and I desire every one of my colleagues not to lose sight of this. First, the British North America Act itself is not only the charter of the Dominion of Canada; it is just as much the charter of the provinces of Canada. We derive our powers from the British North America Act; so do the provinces. They have no Constitution other than the British North America Act; all their powers they derive from that Act. Would it then be fair for us to arrogate to ourselves the right to change the Act which is just as much the Constitution of the provinces as it is our own? Second, my hon. friend speaks of protection to minorities. That is not the only thing in the British North America Act in which the provinces are interested. They have all their powers which they have kept to themselves and which have been agreed by everybody to be their powers. Have we a right to amend the constitution without their consent, in the way for instance, of taking away from them some of the powers which have been theirs since confederation.

Mr. CRERAR: This Parliament would have that power in respect of all provinces excepting the four that originally entered confederation.

Mr. LAPOINTE: I do not agree with my hon. friend in that regard. The other provinces came later into a joint confederation, but they have the same status, powers, and rights as the original four provinces, and they should be consulted just as much as any other province if any substantial change is asked as regards the British North America Act.

Third, within their sphere the provinces enjoy the powers of self-government just as much as the Dominion Parliament does, and, if so, surely the Dominion Parliament cannot take upon itself the right to change a statute which gives to those provinces the powers which they enjoy.

... The conclusion is that we cannot ask for power to alter, without the consent of the provinces, the Constitution which is their own Constitution as well as it is ours. It also follows that if it is to be

considered as a treaty, surely we cannot alter its provisions without at least seeking the consent of the other parties to that treaty.

Now, has it been considered as a treaty? I heard it suggested some time ago that this idea at confederation of a treaty is an antiquated idea. Maybe it is. But, Mr. Speaker, truth does not cease to be truth when it gets old; an old truth is always true. You cannot prevent facts from being facts whether you like them or not. I have here the Debates of the Parliament of Canada on Confederation. . . .

Here is what Sir John Macdonald said—page 15—in answer to the member for Carleton (that is, when the Quebec Resolutions were laid on the table):

. . . the Government desired to say that they presented the scheme as a whole, and they would exert all the influence they could to bring to bear in the way of argument to induce the House to adopt the scheme without alteration, and for the simple reason that the scheme was not one framed by the Government of Canada or by the Government of Nova Scotia, but was in the nature of a treaty settled between the different colonies, each clause of which had been fully discussed, and which had been agreed to by a system of mutual compromise.

In the speech he made a few days afterwards, when moving the adoption of confederation—page 31—he said:

I trust the scheme will be assented to as a whole, I am sure this House will not seek to alter it in its unimportant details; and, if altered in any important provisions, the result must be that the whole will be set aside, and we must begin *de novo*. If any important changes are made, every one of the colonies will feel itself absolved from the implied obligation to deal with it as a treaty, each province will feel itself at liberty to amend it *ad libitum* so as to suit its own views and interests; in fact, the whole of our labours will have been for naught, and we will have to renew our negotiations with all the colonies for the purpose of establishing some new scheme.

Sir George Etienne Cartier, Hon. George Brown, and all the other fathers of confederation used similar language.

Since confederation what have our own statesmen thought about this matter? In 1906-7 Sir Wilfrid Laurier said, and his remarks will be found at page 2199 of the Hansard of that session:

In Parliament here we can do as we please; we are in the majority; but are the members of this House prepared to say that if any province finds itself aggrieved by the terms of confederation, which have been accepted by all the provinces, they will ask the British Parliament to alter the constitution in the way desired by that particular province? Such a course might be followed by very serious consequences. Confederation is a compact, made originally by four provinces, but adhered to by all the nine provinces who have entered it, and I submit to the judgement of this House and to the best consideration of its members, that this compact should not be lightly altered. It should be altered only for adequate cause, and after the provinces themselves have had an opportunity to pass judgement on the same.

Sir Robert Borden—then leader of the Opposition—speaking in the same debate, used the following words:

I agree with what has been said by the right hon. gentleman regarding the undesirability of lightly amending the terms of our constitution and am inclined to agree with him on the necessity of some consultation with the provinces, although of course all the provinces are represented here. But inasmuch as this is a federal compact which we are asked to vary, it is only right that each province should be consulted and its decision given, in the right of its separate entity.

At that time there had been an interprovincial conference which considered the question of increasing the subsidies to the provinces, and after an agreement between those provinces an address was voted by both Houses of this Parliament for the purpose of amending the British North America Act to give to the provinces an increased subsidy. This address was submitted to the Imperial Parliament. The Premier of British Columbia, the late Sir Richard McBride, went to London at the time—not that he was opposed to the amendment altering the provisions of the British North America Act and giving an increased subsidy to the provinces, but his objection was that British Columbia should have more than was given to her under the agreement and under the Act which was submitted to the Imperial Parliament at the request of the Dominion of Canada. I wish to quote from the remarks of the Secretary of State for the Colonies at the time, Mr. Winston Churchill, the present Chancellor of the Exchequer, just to show that the interpretation given to the confederation pact by the public men of the Dominion was also the interpretation given to it by Imperial public men. On submitting the Bill for its first reading Mr. Churchill said:

On the other hand, he would be very sorry if it were thought that the action which His Majesty's Government had decided to take meant that they had decided to establish as a precedent that whenever there was a difference on a constitutional question between the federal Government and one of the provinces

—he was referring to the objection of British Columbia—

the Imperial Government would always be prepared to accept the federal point of view as against the provincial. In deference to the representations of British Columbia the words 'final and unalterable' applying to the revised scale had been omitted from the Bill.

Two or three years ago one of my predecessors in the Department of Justice, Right Hon. Mr. Doherty, had contemplated some legislation along this line, and he communicated with the various provinces. The correspondence is of a confidential character, but I may say that Mr. Doherty and all the Attorneys-General who answered his letter were of the same opinion, that nothing of this kind could be done without the consent of the provinces. The present Attorney-General

of Ontario was not then in the Provincial Government, but I have his opinion in a letter he wrote me last year concerning proposed legislation of this Parliament. This is what Mr. Nickle says:

I do not need to remind you that the British North America Act was a product of representatives from all the provinces as such, and not as representatives to a Dominion Parliament. The Government of this province is of opinion that the Dominion Parliament should not act in the matter of obtaining constitutional changes, without the sanction of the provinces to its proposals to the Imperial Parliament.

Mr. MEIGHEN: Would the Minister of Justice mind telling us what the subject of the communication was? To what change did the Attorney-General of Ontario refer?

Mr. LAPOINTE: It was in regard to a resolution which I moved for the purpose of making it clearer that the legislation of the Dominion of Canada should have extra-territorial effect; and he suggested the insertion of two or three words, which were inserted with our consent when the measure was before the Senate. In regard to the question of the hon. member for Brome (Mr. McMaster) I may say that every time an important amendment was made it was first submitted to the provinces. I do not think there are many cases in which an amendment has been asked to the British North America Act without communicating with the provinces. If it was done it was only in cases where there could be no possible objection on the part of the provinces.

I repeat, Mr. Speaker, that if the British North America Act is a covenant, is of the nature of a treaty the provisions of which were essential for the acceptance of the whole scheme, have we the right to ask to be enabled to alter it without the consent of those who were parties to the agreement?

Right Hon. ARTHUR MEIGHEN (Leader of the Opposition): The resolution itself calls upon this House to petition the British Parliament to give us power to amend the British North America Act by a majority vote. I have not heard any hon. member, save the mover, support the resolution in those naked terms. The speech of the Minister of Justice (Mr. Lapointe) is decisive in the negative. He raised only the one objection—no other is needed. He laboured it, perhaps, too long, but he presented it most forcibly and well. No one in this Parliament of Canada could dream, for a moment, of asking the British House of Commons and House of Lords to tear up the securities to which we and others are parties on the mere demand of this House itself. Undoubtedly, the pact of confederation is a contract and there are rights involved therein not represented by the Parliament of Canada. We could not put ourselves in the position of asking that rights so secured should be disturbed on our motion alone. The speech of the Minister of Justice determines, I think, without power of dispute, that there should never be suggestion of amendment

affecting other parties to the contract save after conference and consent of those other parties.

... The amendment of the hon. member for Winnipeg (Mr. Woods-worth) is more cautious. It is to the effect that we shall petition for power to amend at our will within certain limits the British North America Act, but shall do so only after having obtained the consent of all of the provinces of Canada. Even then the amendment proposes that we have authority to change only within the limits of a rather contracted circle. We are not to ask even with the approval of all the provinces for unlimited power of amendment, we are to ask only for power to amend in so far as we can do so without interference with minority rights. This is the undoubted result of the language in which the amendment appears as suggested by the hon. member for Centre Winnipeg. In the first place, I do not think it would be a matter of convenience that the whole of the provinces of Canada should in every case consent. If we are going to put those obstacles in front of our course, we are going to add to the difficulties, if any did exist, that we have had in the past. We have amended the British North America Act many times upon address of this House without speaking to the provinces at all. Why? Because the amendments we asked for did not affect in any way minority rights, did not affect in the remotest way provincial rights, were amendments in which the provinces or minorities were not concerned at all. It would be cumbersome indeed in such cases to be compelled to pass first from province to province and obtain universal approval. Besides, I do not think we are going to gain anything in the world by asking for power to be vested in this House to amend, in relation to one sphere, a constitutional right while, in relation to another sphere, we must pursue the course we have pursued in years gone by. It seems to me that then would develop an anomalous situation and it is merely fanciful and illusory for us to dream that, after we have such result, our status would be in the least elevated or that we would be more of a nation than we are to-day. . . .

There still remains, however, the question at large, should we seek by some channel or other to obtain these powers? It perhaps is not worth discussing in so far as deciding the vote of any one on what is before us is concerned, but it has been discussed and I do not want to evade it in any degree whatever.

I am afraid myself that if we launch very far into this question and seek to set up some other method than that already pursued we are only going to get farther and farther into the morass; and any substitute which we are able to invent will be far more cumbersome and even less dignified than that to which we have subscribed through all these years. We differ from Australia and South Africa. We are a federation of a variety of minorities and majorities. A suggestion has been made, I believe, by Sir Clifford Sifton—and I cannot help

but note the more brotherly language and Christian spirit in which his name is spoken of by hon. gentlemen opposite now than characterized similar references just a few years ago—that there should be some divisions created throughout the Dominion and some proportional representation election; and that the delegates so elected should redraft our Constitution. Well, it seems to me that if such were done the very securities that now prevail would be insisted on again. There is no reason in the world to assume that any different securities could be substituted. And why is this the case? Simply because you cannot erect any structure of balances and referendums as simple and effective as the method which obtains to-day. Imagine an agreement to which any minority in this country could logically be asked to subscribe, an agreement under which there would be a reference to the provinces and then a reference to minorities, all entailing weeks and months, perhaps years of labour, all giving rise to disputations and controversies, section against section—that is to say, if the change proposed amounted to anything at all. Imagine a system such as that to which any of the various minorities of Canada would likely subscribe at any conference! No matter how you go about it, whether by a new system of divisions or by the legislatures as they exist in conjunction with this Parliament, you will arrive ultimately at just the same difficulty which confronted the fathers of confederation and which they surmounted by the instrumentality of the British North America Act.

Is it all worth while? Are we going to be any better off after this is all done than we are now? The answer comes in the speeches we have heard this very day. One hon. gentleman, even the mover himself, rises and says: 'All I ask for, and I ask it in the name of the dignity and nationhood of Canada, is that in matters which do not affect minorities we shall have the right to amend our constitution.' And he declares that to the outside world our status will be enhanced; it will all appear a whole lot better to the world at large, who will look on us as higher in rank among the nations, more independent, more autonomous, less subordinate to the Motherland. I do not follow this reasoning at all. If we would still have in all important cases to go through the circuitous journey which we take now, why should we not do the same in every instance? If the outside world sees us take this course in all matters of consequence, I do not think that we are likely to be elevated to any position of superior dignity because we do not have to submit to the same necessity in matters which are merely minor. The hon. member for Lotbinière (Mr. Vien) says that there are certain subjects which he never would commit for decision to the Parliament of Canada, no matter who else might consent to this being done. We rest, says he, on the security which is found in the British Parliament so far as these particular matters are concerned. But, says the hon. member, as to other subjects, 'for the

sake of our position before the world, I beg of you to adopt some new means whereby we can change the act at will'. For the life of me I do not see anything to be gained at all so long as there is something reserved.

But if there were nothing reserved, if all minorities would agree to something definite—and this to my mind is purely visionary—if all were unanimous that we abandon recourse to the British Parliament altogether, and, through some system at home, vest in the various legislatures and the Parliament of Canada the right to amend the Constitution, would we really be farther ahead than we are now? The Prime Minister says, and I support him to the full, that we have to-day an absolute constitutional right to fix the terms of our Constitution. Speaking for the people of Canada, satisfying the British Parliament that we so speak—and there is no difficulty in doing this if the voice of objection is not heard—we have the right as a Parliament to decide what goes into that Act and what stays out. Such is our position to-day. Hon. gentlemen say: 'Yes, but that only rests on the foundation of constitutional right; by law we still have to go around the route to the British Parliament, and we do not want to rest on the insecure basis of mere constitutional right. We want our legal rights plainly defined before the world.' Let us inquire into that contention. In my judgement our legal position would not be one whit the stronger in that case than it is now. True, it is by virtue of constitutional right that we can now dictate virtually any amendments to the Act, provided we speak for all Canada and the voice of minorities raises no objection. But the sanction of constitutional right within this British Empire is just as firm, just as lasting, and just as dependable as the voice of law itself. But I go farther. When we have gone through all this and got our substituted system, when we have obtained the legal right to amend in our several Parliaments this British North America Act, the legal foundation is not one iota better than it was before. Why do I say that? Though the British North America Act may be amended, in such a way as to give the Parliament of Canada, after a long series of provincial approvals, the right to amend the Act, after that is all done the legal power would still remain in the British Parliament to change the Act at will. And nothing could restrain them save a regard for constitutional authority. In other words, we would still be protected by constitutional right and constitutional right alone; the legal power in the British Parliament would remain to amend the Act or to repeal it. So that, after all, the sanction we would have would be the very sanction we now enjoy. The legal right exists to-day, for example, on the part of His Majesty to veto any Act of the Parliament of Great Britain. Though the legal right exists, however, the constitutional right has died; it is antiquated and obsolete and virtually does not exist at all. And it would be just as true to say that the Parliament of Great Britain to-day is a mere

instrument and tool of monarchy as it is to say that this Parliament, speaking for the people of Canada, has not the right to amend our Constitution. We have the right, and before the world we could be no better off or better protected if any scheme whatever of the nature now proposed were adopted.

I may be old fashioned in this matter, and if I am I will take the consequences. But I am not very anxious to strip the British Empire of those emblems of unity which to-day dignify it before the face of the world. I do not want to do anything of the kind unless there is something to be gained, something material and practical beyond all that is lost. For my own part I think we have travelled far enough along this road. Rather, I believe that it has—on ourselves and on the world without—a wholesome effect to see these visible signs of our unity remain, to see our appeal to the Privy Council preserved, to see our power of amendment exercised through the old British Parliament; to see in a word that the British Empire is the British Empire still.

2. REPORT OF DOMINION-PROVINCIAL CONFERENCE, 1927

(*Canadian Sessional Papers*, 1928, No. 69, pp. 11-12.)

The question of 'Procedure in amending the British North America Act' was the subject of discussion during the entire session of the Dominion-Provincial Conference this morning. This item of the agenda was introduced through an opinion submitted for discussion by Hon. Ernest Lapointe, Minister of Justice. In effect the opinion in question was that Canada, in view of the quality of status which she now enjoys as declared at the last Imperial Conference and in view further of the cumbersome procedure now required, should have the power to amend her own Constitution, and that legislation should be asked for from the United Kingdom for that purpose. In order that adequate safeguard should be provided it was proposed that in the event of ordinary amendments being contemplated the provincial legislature should be consulted, and a majority consent of the provinces obtained, while in the event of vital and fundamental amendments being sought involving such questions as provincial rights, the rights of minorities, or rights generally affecting race, language, and creed, the unanimous consent of the provinces should be obtained.

Representatives of all the provinces were heard during the discussion, and every conceivable phase of the subject was dealt with. The Conference divided sharply on the proposal, a portion of the members being entirely opposed to any change in the present procedure. While others either approved of the opinion expressed by the Minister in its entirety or with minor modifications. On the question of the rights of minorities and of other rights specifically laid down in the British North America Act there was no divergence of opinion whatsoever.

Several of the opponents of the proposal feared that such rights might be in danger by the change, while those who supported the proposal pledged their own provinces to the maintenance and continuance of every right at present enjoyed.

In submitting his opinion the Minister of Justice pointed out that while there had been five amendments to the British North America Act on only one occasion had the provinces been consulted. This was in 1907 when the subsidy question was up; on that occasion there was only one dissenting province, namely, British Columbia. Amendments to the Constitution could be divided into two classes; those which might have the effect of increasing the power of the Dominion Parliament or Government at the expense of the provinces; and those not affecting provincial autonomy or individual rights. In the past it had not been regarded as necessary to consult the provinces in connexion with proposed amendments of the latter class. He pointed out that it had never been contended that the Constitution could not be amended. The question was simply, therefore, as to the procedure which should be followed, and as to whether Canada should not have the same powers over its Constitution as had the sister self-governing Dominion. The present method was not consistent with the Dominion's status. In view of the present usage of automatic acceptance of proposals made and of the practice in all the other Dominions, the minister contended that it would be better if in the future amendments to the British North America Act should be made by legislation of the Dominion Parliament subject to the conditions set forth. The questions on which unanimity of the provinces should be required might be specified under sections 93 and 133 and section 92, subsections 12, 13, 14, of the British North America Act.

Opponents of the proposal opposed it on various grounds. It was contended that there was no widespread demand for such a change; that if Canada had the right of herself to amend her Constitution all sorts of demands for changes would be made that on no occasion had the Imperial Government refused a demand for amendment; that to submit all sorts of proposals to the provincial governments for approval would stir up local party strife and arouse sentiment and feeling; that inasmuch as the Dominion's charter came from London, Canada should go to London for amendments thereto and that under the conditions as proposed amendments might become too easy to secure.

Supporters of the proposal put forward by the Minister argued strongly on its behalf, declaring that the change must come sooner or later if Canada were to keep abreast of her status. The Constitution they contended could not be regarded as rigid and inflexible and must be subject to change with the changing times. It was, therefore, only a question of the best procedure to be adopted under the circumstances. It was held by one speaker that unity would not be furthered

by the idea that Canadian questions could only be settled by an independent tribunal. The suggestions made by the Minister he believed would promote confidence and demonstrate to the world that the people of Canada were prepared to deal justly with their minorities. The declaration of the Imperial Conference was generally accepted as a definition to the world of equal status. Canada should therefore keep pace with that status.

At the conclusion the Minister stated that the Government would carefully consider all the opinions on the subject both pro and con.

3. REPORT OF THE CONFERENCE ON THE OPERATION OF DOMINION
LEGISLATION AND MERCHANT SHIPPING LEGISLATION, 1929

(*Report*, pp. 11-12, 23-30.)

10. With regard to certain points connected with Dominion legislation—disallowance, reservation, the extra-territorial operation of Dominion laws, and the Colonial Laws Validity Act—the Imperial Conference of 1926, while recognizing that there would be grave danger in attempting in the limited time at their disposal any immediate pronouncement in detail on issues of such complexity, set forth certain principles which were considered to underlie the whole subject. As regards disallowance and reservation it was recognized that, apart from provisions embodied in Constitutions or in specific statutes expressly providing for reservation, it is the right of the Government of each Dominion to advise the Crown in all matters relating to its own affairs; and that consequently it would not be in accordance with constitutional practice for advice to be tendered to His Majesty by His Majesty's Government in the United Kingdom in any matter appertaining to the affairs of a Dominion against the view of the Government of that Dominion. It was also suggested that the appropriate procedure with regard to projected legislation in one of the self-governing parts of the Empire which may affect the interests of other self-governing parts is previous consultation between His Majesty's Ministers in the several parts concerned; and it was stated that, with regard to the legislative competence of members of the British Commonwealth of Nations other than the United Kingdom, and in particular to the desirability of those members being enabled to legislate with extra-territorial effect, the constitutional practice is that legislation by the Parliament of the United Kingdom applying to a Dominion would only be passed with the consent of the Dominion concerned.

11. It was, however, considered that there were points arising out of these considerations, and in the application of these general principles, which required detailed examination. In the first place, there remains a considerable body of law passed by the Parliament of the United Kingdom which still applies in relation to the Dominions and at present cannot be repealed or modified by Dominion Parlia-

ments; secondly, under the existing system His Majesty's Government in the United Kingdom retains certain powers with reference to Dominion legislation; and, thirdly, while the Parliament of the United Kingdom can legislate with extra-territorial effect, there is doubt as to the powers in this respect of Dominion Parliaments.

Colonial Laws Validity Act. Present Position

45. The circumstances in which the Colonial Laws Validity Act, 1865, came to be enacted are so well known that only a brief reference to them is necessary in this Report.

46. From an early stage in the history of colonial development the theory had been held that there was a common law rule that legislation by a colonial legislature was void if repugnant to the law of England. This rule was apparently based on the assumption that there were certain fundamental principles of English law which no colonial law could violate, but the scope of these principles was by no means clearly defined.

47. A series of decisions, however, given by the Supreme Court of South Australia in the middle of the nineteenth century applied the rule so as to invalidate several of the Acts of the legislature of that colony. It was soon realized that, if this interpretation of the law were sound, responsible government, then recently established by the release of the Australian colonies from external political control, would to a great extent be rendered illusory by reason of legal limitations on the legislative power which were then for the first time seen to be far more extensive than had been supposed. The serious situation which thus developed in South Australia led to an examination of the whole question by the Law Officers of the Crown in England, whose opinion, while not affirming the extensive application of the doctrine of repugnancy upheld by the South Australian Court, found the test of repugnancy to be of so vague and general a kind as to leave great uncertainty in its application. They accordingly advised legislation to define the scope of the doctrine in new and precise terms. The Colonial Laws Validity Act, 1865, was enacted as the result of their advice.

48. The Act expressly conferred upon colonial legislatures the power of making laws even though repugnant to the English common law, but declared that a colonial law repugnant to the provisions of an Act of the Parliament of the United Kingdom extending to the colony either by express words or by necessary intendment should be void to the extent of such repugnancy. The Act also removed doubts which had arisen regarding the validity of laws assented to by the Governor of a colony in a manner inconsistent with the terms of his Instructions.

49. The Act, at the time when it was passed, without doubt extended the then existing powers of colonial legislatures. This has always been recognized, but it is no less true that definite restrictions

of a far-reaching character upon the effective exercise of those powers were maintained and given statutory effect. In important fields of legislation actually covered by statutes extending to the Dominions the restrictions upon legislative power have caused and continue to cause practical inconvenience by preventing the enactment of legislation adapted to their special needs. The restrictions in the past served a useful purpose in securing uniformity of law and co-operation on various matters of importance; but it follows from the Report of the Imperial Conference of 1926 that this method of securing uniformity, based as it was upon the supremacy of the Parliament of the United Kingdom, is no longer constitutionally appropriate in the case of the Dominions, and the next step is to bring the legal position in accord with the constitutional. Moreover, the interpretation of the Act has given rise to difficulties in practice, especially in Australia, because it is not always possible to be certain whether a particular Act does or does not extend by necessary intendment to a Dominion, and, if it does, whether all or any of the provisions of a particular Dominion law are or are not repugnant to it.

General Recommendations

50. We have therefore proceeded on the basis that effect can only be given to the principles laid down in the Report of 1926 by repealing the Colonial Laws Validity Act, 1865, in its application to laws made by the Parliament of a Dominion, and the discussions at the Conference were mainly concerned with the manner in which this should be done. Our recommendation is that legislation be enacted declaring in terms that the Act should no longer apply to the laws passed by any Dominion.

51. We think it necessary, however, that there should also be a substantive enactment declaring the powers of the Parliament of a Dominion, lest a simple repeal of the Colonial Laws Validity Act might be held to have restored the old common law doctrine.

53. We recommend that effect be given to the proposals in the foregoing paragraphs, by means of clauses in the following form:

(1) *The Colonial Laws Validity Act, 1865, shall cease to apply to any law made by the Parliament of a Dominion.*

(2) *No law and no provision of any law hereafter made by the Parliament of a Dominion shall be void or inoperative on the ground that it is repugnant to the law of England or to the provisions of any existing or future Act of Parliament or to any order, rule or regulation made thereunder, and the powers of the Parliament of a Dominion shall include the power to repeal or amend any such Act, order, rule or regulation in so far as the same is part of the law of the Dominion.*

54. With regard lastly to the problem which arises from the existence of a legal power in the Parliament of the United Kingdom

to legislate for the Dominions, we consider that the appropriate method of reconciling the existence of this power with the established constitutional position is to place on record a statement embodying the conventional usage. We therefore recommend that a statement in the following terms should be placed on record in the proceedings of the next Imperial Conference—

'It would be in accord with the established constitutional position of all members of the Commonwealth in relation to one another that no law hereafter made by the Parliament of the United Kingdom shall extend to any Dominion otherwise than at the request and with the consent of that Dominion.'

We further recommend that this constitutional convention itself should appear as a formal recital or preamble in the proposed Act of the Parliament of the United Kingdom.

55. Practical considerations affecting both the drafting of Bills and the interpretation of Statutes make it desirable that this principle should also be expressed in the enacting part of the Act, and we accordingly recommend that the proposed Act should contain a declaration and enactment in the following terms:

'Be it therefore declared and enacted that no Act of Parliament hereafter made shall extend or be deemed to extend to a Dominion unless it is expressly declared therein that that Dominion has requested and consented to the enactment thereof.'

57. If the above recommendations are adopted, the acquisition by the Parliaments of the Dominions of full legislative powers will follow as a necessary consequence. We then proceeded to consider whether in these circumstances special provision ought to be made with regard to certain subjects. These seemed to us to fall into two categories, namely, those in which uniform or reciprocal action may be necessary or desirable for the purpose of facilitating free co-operation among the members of the British Commonwealth in matters of common concern, and those in which peculiar and in some cases temporary conditions in some of the Dominions call for special treatment.

62. The second subject which we considered concerns the effect of the acquisition of full legislative powers by the Parliaments of the Dominions possessing federal Constitutions.

63. Canada alone among the Dominions has at present no power to amend its Constitution Act without legislation by the Parliament of the United Kingdom. The fact that no specific provision was made for effecting desired amendments wholly by Canadian agencies is easily understood, apart from the special conditions existing in Canada at that time, when it is recalled that the British North America Act, 1867, was the first Dominion federation measure and was passed

over sixty years ago, at an early stage of development. It was pointed out that the question of alternative methods of amendment was a matter for future consideration by the appropriate Canadian authorities and that it was desirable therefore to make it clear that the proposed Act of the Parliament of the United Kingdom would effect no change in this respect. It was also pointed out that for a similar reason an express declaration was desirable that nothing in the Act should authorize the Parliament of Canada to make laws on any matter at present within the authority of the provinces, not being a matter within the authority of the Dominion.

66. We are accordingly of opinion that the inclusion is required in the proposed Act of the Parliament of the United Kingdom of express provisions dealing with the matters discussed in the three preceding paragraphs, and we have prepared the following clauses:

(1) *Nothing in this Act shall be deemed to confer any power to repeal or alter the Constitution Acts of the Dominion of Canada, the Commonwealth of Australia, and the Dominion of New Zealand, otherwise than in accordance with the law and constitutional usage and practice heretofore existing.*

(2) *Nothing in this Act shall be deemed to authorize the Parliaments of the Dominion of Canada and the Commonwealth of Australia to make laws on any matter at present within the authority of the Provinces of Canada or the States of Australia, as the case may be, not being a matter within the authority of the Parliaments or Governments of the Dominion of Canada and of the Commonwealth of Australia respectively.*

4. THE COMPACT THEORY OF CONFEDERATION

(a) *Letter and Memorandum of Hon. Howard Ferguson*

(Toronto Globe, September 20, 1930.)

Vigorous protest against the Dominion Government or the Imperial Conference making any changes in the Provincial Treaty without consulting the provinces has been filed by Premier Ferguson of Ontario with Prime Minister Bennett and will be placed before the Imperial Conference by the Dominion Prime Minister.

Mr. Ferguson's protest, which is contained in a memorandum on the question, and a covering letter, both of which were forwarded to Mr. Bennett under date of September 10, were made public to the press at Queen's Park yesterday....

The letter and memorandum follow:

My dear Mr. Prime Minister:

You will recall that in some discussions we have had with reference to the report of the Imperial Conference, and, in particular, the

recommendations made in the report of 1929, I have endeavoured to make clear to you the attitude of the province of Ontario.

The Conference appears to have ignored the fact that the confederation of the provinces of Canada was brought about by the action of the provinces. Our Constitution is really the crystallization into law by an Imperial statute of an agreement made by the provinces after full consultation and discussion. The province of Ontario holds strongly to the view that this agreement should not be altered without the consent of the parties to it.

On behalf of this province I desire to protest most vigorously against any steps being taken by the Dominion Government, or the Imperial Conference, to deal with the Provincial Treaty until the matter has been submitted to the provinces and they have had ample time to give the subject proper consideration.

To pursue the course indicated by the report of 1929 will not only greatly disturb the present harmonious operation of our Constitution, but I fear may seriously disrupt the whole structure of our confederation.

Ontario is genuinely alarmed about the situation, and I earnestly urge upon you, representing the Dominion, and through you upon the Imperial Conference, that this whole matter be left in abeyance until it can be dealt with in a proper manner, and to the satisfaction of the parties to the original compact.

I am enclosing you herewith a memorandum which embodies in a brief form the story of confederation, together with the views of a number of public men who were leaders in the movement; the interpretation of the courts upon the status of the province; and the recent trend of the Dominion authorities upon the question.

With the story as a background, I am sure that a perusal of the reports of the last two Conferences will convince you that the Provinces have ample ground for serious alarm.

Yours very truly,
(Sgd.) G. H. FERGUSON.

The memorandum prepared by Premier Ferguson and addressed to Premier Bennett, reads:

It is respectfully submitted that the right of the various provinces to an equal voice concerning any contemplated changes in the law or the convention of the Constitution of the Dominion rests upon fundamental considerations and historic facts which are as binding to-day as ever they were upon all the parties to confederation. The Constitution of Canada is partly written and partly unwritten. As a distinguished writer has pointed out, the unwritten Constitution includes all the great landmarks of British and Canadian history as well as generally recognized conventions and usages. The written Constitution is found in the Imperial legislation, known as the British North America Acts, passed at various dates.

The British North America Act, 1867, is usually referred to as the Compact of Confederation. This expression has its sanction in the fact that the Quebec resolutions, of which the Act is a transcript, were in the nature of a treaty between the provinces which originated the Dominion.

At the time of confederation these provinces had before them two proposals for union of a widely different nature. There were those who considered that the most advantageous arrangement would be a legislative union under which the law-making power would be centralized in one Parliament, following the British precedent up to that time. There were others who believed that the best arrangement would be a federal union, with a federal Parliament charged with authority over matters of a general nature, but preserving to the provinces legislative control over local objects and the guardianship of provincial interest.

It was realized at an early stage of the proceedings that a legislative union was not acceptable. The plan was discussed at the Charlottetown Conference, and was deliberately set aside by all parties to the negotiations. Therefore, when the delegates of the provinces met in Quebec in October 1864, it was to draft a plan for a federal union of the provinces of British North America.

The equality of all the provinces, irrespective of population and dimensions, was recognized by the fact that each province was allowed one vote, Ontario and Quebec having one vote each, though they were at the time united under the Union Act.

At the outset of the proceedings Hon. John A. Macdonald declared himself in favour of a powerful central Government. He added, however: 'Great caution is necessary. The people of every section must feel that they are protected, and by no overstraining of central authority should such guarantees be over-ridden. Our Constitution must be based on an Act of the Imperial Parliament, and any question as to over-riding sectional matters determined by "Is it legal or not?" The judicial tribunals of Great Britain would settle any such difficulties should they occur.' (*Pope's Confederation Documents*, p. 55.)

On this same subject, Sir E. P. Taché, Chairman of the Conference, said: 'The majority of the people believe if their rights and privileges are left to the Local legislatures they will be safe in the liberties guaranteed to them and ratified by solemn treaties, even if we do not come to an understanding on the subject of Confederation.' (From Notes on the Conference, by A. A. Macdonald of Prince Edward Island, in the Canadian Archives.)

The first declaration of the Conference was in the following terms: 'The best interests and present and future prosperity of British North America will be promoted by a Federal Union, provided such union can be effected on principles just to the provinces.'

Additional emphasis was given to this declaration in the second resolution by the statement that the proposed federation would provide a system 'best adapted, under existing circumstances, to protect the diversified interests of the several provinces and secure efficiency, harmony, and permanency in the working of the union'.

Thus in the foreground of all the proceedings in the formative stage of the union, is the plain intimation that the Dominion was being created at the instance of the provinces, and that all undertakings made by them on their own behalf would be strictly observed.

On this basis the resolutions of the Quebec Conference setting out in detail the plan of confederation were drafted, considered and adopted, and eventually presented to the Canadian Parliament for ratification.

The Canadian Parliament was asked in 1865 to give formal ratification to the resolutions as a treaty of union between the various provinces. Hence Parliament was required to consider the resolutions *en bloc* without amendment. Explaining this proceeding, Hon. John A. Macdonald said that 'the scheme should be carried out as a whole, that it should be dealt with as a treaty, to be endorsed without one single amendment or alteration'. And Hon. George E. Cartier affirmed of the proposal: 'It is the same as any other treaty entered into under the British system.'

Some doubts were expressed as to whether changes might be made in the Draft Act by the Imperial Parliament. On this subject Hon. George E. Cartier gave a very explicit and earnest assurance to Parliament. He said: 'I have already declared in my own name and on behalf of the Government that the delegates who go to England will accept from the Imperial Government no Act but one based on the resolutions adopted by this House, and they will not bring back any other. I have pledged my word of honour and that of the Government to that effect.'

It is not without significance that the British North America Act, as arranged for by the treaty and as enacted by the Imperial Parliament, did not confer upon the federal Parliament any power to amend the Constitution of Canada, although each province was given power to amend its constitution, except as regards the office of Lieutenant-Governor.

History has vindicated this precaution. If the power to amend the Constitution had been vested in the Dominion, it is probable that the long and hitherto successful controversy as to the constitutional rights of the provinces would have had a different outcome, because at any stage of the struggle the Dominion Parliament would have had power to enact legislation setting aside the pretensions of the provinces.

The wide measure of power wisely reserved to the provinces at confederation, and their relation to the federal authority, have been

clearly set forth by the Judicial Committee of the Privy Council on several occasions, of which the following are notable:

Lord Watson in *Liquidators of the Maritime Bank of Canada v. Receiver-General of New Brunswick* (1892), A.C. 441-2, referring to the British North America Act, 1867, said:

'The object of the Act was neither to weld the provinces into one nor to subordinate provincial Governments to a central authority, but to create a federal Government in which they should all be represented, entrusted with the exclusive administration of affairs in which they had a common interest, each province retaining its independence and autonomy. That object was accomplished by distributing between the Dominion and the provinces all powers, executive and legislative, and all public property and revenues which had previously belonged to the provinces, so that the Dominion Government should be vested with such of these powers, property and revenues as were necessary for the due performance of its constitutional functions, and that the remainder should be retained by the provinces for the purposes of provincial government. But, in so far as regards these matters which, by section 92, are specially reserved for provincial legislation, the legislation of each province continues to be free from the control of the Dominion and as supreme as it was before the passing of the Act.'

In *Hodge v. The Queen*, 9 A.C. 131-2, Sir Barnes Peacock, delivering the opinion of the Board, said:

'When the British North America Act enacted that there should be a Legislature for Ontario, and that its Legislative Assembly should have exclusive authority to make laws for the province and for provincial purposes in relation to the matters enumerated in section 92, it conferred powers not in any sense to be exercised by delegation from or as agents of the Imperial Parliament, but authority as plenary and as ample within the limits prescribed by section 92, as the Imperial Parliament in the plenitude of its power possessed and could bestow. Within these limits of subject and area, the local legislature is supreme, and has the same authority as the Imperial Parliament, or the Parliament of the Dominion.'

Further elaboration of this view is rendered unnecessary by the fact that it is not denied by any authority that the resolutions adopted by the Quebec Conference were in the nature of a compact or treaty between the provinces. When the Dominion came into existence it assumed all the obligations and conditions accepted on its behalf by its sponsors. Provinces subsequently attached to the Dominion, or established at its instance, under the provisions of the British North America Act, occupied the same relation towards the federal authority as the original parties to the compact of confederation.

It is not contended that the British North America Act is unalterable, or that it is complete or perfect in its terms. After twenty years'

experience the representatives of five of the provinces, being all of the original provinces and the province of Manitoba, held the first Interprovincial Conference in the city of Quebec. That Conference, of which Sir Oliver Mowat, one of the fathers of confederation, was Chairman, declared that in many respects what was the common understanding and intention had not been expressed in the British North America Act, and that important provisions in the Act are obscure as to their true intent and meaning. Accordingly the Conference drafted seventeen amendments as a basis on which the Act should be amended 'subject to the approval of the several Provincial Legislatures'. The Conference did not produce any practical results beyond the precedent which it established.

On five occasions the Imperial Parliament has passed measures to amend the British North America Act, and on only one of these, when the federal subsidy was readjusted, have the provinces been consulted. Altogether during the first sixty years of confederation thirty-three Acts have been passed by the Parliament of the United Kingdom, modifying the original Act.

The result of these precedents has been to undermine the constitutional right of the provinces to be consulted regarding amendments to the British North America Act. Recently it has been contended that the Dominion Government has the authority to decide whether or not the provinces should be consulted. In 1924, when the federal Parliament was asked to approve of an amendment to the British North America Act regarding extra-territorial legislation, the Government of Ontario formally protested against the proceeding until the amendment had been submitted to the various provinces. The Minister of Justice denied the provinces any voice in the matter on the ground that it did not in any way concern them; although it was urged upon him by the Attorney-General of Ontario, in a letter dated July 10, 1924, that 'in the opinion of the law officers of the province of Ontario an amendment to the British North America Act, in the words of your resolution, might be interpreted as forming a basis of encroachment upon matters of legislation unquestionably given to the province by the British North America Act'.

On this occasion the Attorney-General of Ontario also ventured the following protest on the broader issue involved: 'I do not need to remind you that the British North America Act was a product of representatives from all the provinces as such, and not as representatives to a Dominion Parliament. The Government of this province is of opinion that the Dominion Parliament should not act in the matter of obtaining constitutional changes without the sanction of the provinces to its proposals to the Imperial Government.'

These official representations were followed in a few days by a public declaration by the Prime Minister of Ontario in an address delivered at Prescott on July 12. The *Toronto Globe* of July 14

reports the Hon. Mr. Ferguson as follows: 'I was surprised and disturbed the other day by the introduction in the House of Commons of a resolution by Hon. Ernest Lapointe. That move is not only inadvisable, but if the Dominion Parliament were given this right it would be a breach of faith with the provinces. Confederation was the result of certain compromises between the provinces entering into it. It amounts to an agreement, and my view is that there should not be any amendment without the consent of the provinces, and no request should be made of the British Parliament without first ascertaining whether or not the provinces would consent.'

'The province of Ontario feels so strongly about this that we have already made a protest to the federal Government against making any such move without conference with and the co-operation of the various provinces. All our personal and civil rights are now in the keeping and protection of the provinces, and any amendment that would extend the authority of the Dominion might easily be a serious menace to our national unity.'

Other incidents in the recent constitutional developments of Canada invite particular attention. . . . (Here follows a brief review of the debates in the House, 1925; the report of the Dominion-Provincial Conference, 1927; and the report of the Committee on the Operation of Dominion Legislation, 1929.)

While this subject is under discussion it would not be opportune to give Imperial statutory authority to incidents which have been allowed, through inadvertence or otherwise, to find a footing in our constitutional procedure. Such an enactment which [sic] has been and is likely to be a source of friction and weakness to the Dominion of Canada. It is, therefore, earnestly represented that no re-statement of the procedure for amending the Constitution of Canada can be accepted by the province of Ontario that does not fully and frankly acknowledge the right of all the provinces to be consulted, and to become parties to the decision arrived at.

(b) *The Compact Theory of Confederation*

(N. McL. Rogers in *Proceedings of Canadian Political Science Association*, 1931, pp. 205-30.)

The compact theory of federalism in its Canadian form of expression is the deferred result of a sin of omission on the part of the fathers of confederation, a sin which in scriptural fashion has now been visited upon their children even unto the third and fourth generation. Sometimes we are tempted to recall with pride that the great task of the Quebec Conference was accomplished in the brief period of sixteen days, and perhaps to congratulate ourselves that this achievement compares most favourably with the four months devoted to the framing of the Constitution of the United States and the much longer period spent upon the Constitution of the Commonwealth of

Australia. No one can doubt that those who drafted the Quebec Resolutions performed a difficult task with a high degree of skill and a reasonable measure of foresight, but it is not easy to forgive them for their failure to realize the necessity of providing the means whereby the Constitution might be amended in future years without incurring needless friction between the Dominion and the provinces. Certainly they would be the more entitled to our gratitude to-day if they had continued their sessions another week if need be in order to erect safeguards against the misunderstandings which must arise when changing conditions and new currents of political and economic thought would lead to a demand for alterations of the original terms of union. It may be argued, of course, that the omission of a procedure of amendment was deliberate. But this does not lessen the gravity of the offence. The very assumption of deliberate omission has encouraged the Dominion and provincial authorities to put their own interpretations on the significance of this alleged intention, and unfortunately there is no preponderance of direct evidence to support the pleadings of either party to the dispute. Whether or not the failure to devise an amendment procedure was the result of intention or oversight, it is certain that the predicament in which we now find ourselves must be laid in the first instance at the door of the Quebec Conference, and in the second instance upon the representatives of the Imperial Government who assisted in drafting the British North America Act at the London Conference of 1866.

The most recent declaration of the compact theory of confederation is to be found in a Memorandum submitted within the past year to the Prime Minister of Canada by Hon. G. H. Ferguson on behalf of the province of Ontario.

Since the British North America Act is unique among federal Constitutions in not providing within itself a procedure of amendment, the compact theory of confederation as set forth in the Memorandum . . . must seek its justification in history, practice, federal theory, or practical convenience. It would not be going too far to say that proponents of this theory have generally been satisfied to establish their contentions on historical foundations. They argue that the Quebec Conference of 1864 consisted of delegations from the several provinces which were to be united under a federal Constitution; that these several delegations agreed to seventy-two resolutions as the basis of union: that these resolutions received the formal approval of the provincial legislatures and were in fact the basis of the British North America Act; that therefore in the absence of any provisions to the contrary, the future amendment of the British North America Act must follow the same procedure as that by which the Quebec Resolutions were initiated and approved, namely, the unanimous consent of the constituent provinces of the Dominion. This argument

is supported with collateral evidence in the form of frequent use of the words 'treaty' and 'compact' as applied to the Quebec Resolutions by leading members of the Conference, thus indicating that these resolutions were regarded as having a binding character as between the several contracting provinces.

It is evident that difficulties arise the moment we attempt to identify the parties to the alleged treaty or agreement of confederation. Is the Dominion a party? It did not exist prior to the passing of the British North America Act. Are Ontario and Quebec parties to the agreement? They were not distinct provinces during the confederation negotiations, although it is true that Upper and Lower Canada were accorded a separate status at the Quebec and London Conferences. Are Prince Edward Island and British Columbia parties to the compact? They made no agreement with the other provinces but only with the Dominion. Are Manitoba, Alberta, and Saskatchewan to be regarded as parties to the agreement? They were created by Acts of the Dominion Parliament. These difficulties, however formidable they may appear to the lay mind, are swept away by supporters of the compact theory on the ground that the nine provinces occupy a position of complete equality in the Dominion, and that those which entered the union or were created after confederation must be assumed to have the same rights and obligations as the original members. In other words, the contract was express as regards the Canadas, New Brunswick, and Nova Scotia and implied as regards the remainder. This view is thus presented in Mr. Ferguson's Memorandum:

When the Dominion came into existence it assumed all the obligations and the conditions that had been accepted on its behalf by its sponsors. Provinces which were subsequently attached to the Dominion or established at its instance under the provisions of the British North America Act occupied the same relations towards the federal authority.

It is apparent, therefore, that the real substratum of the compact theory is the original compact or treaty which it is alleged was made at confederation. Any useful examination of that theory must begin with an inquiry into the nature and significance of the transactions which preceded the passage of the British North America Act in 1867.

The question whether the Quebec Resolutions constituted a treaty in form and fact would scarcely deserve serious consideration were it not for the explicit statements in this regard which were made by certain delegates at the Quebec Conference who supported the resolutions in the Canadian Legislature. In addition to the declarations of Macdonald and Cartier referred to by Mr. Ferguson in his Memorandum . . . an interesting exchange occurred between George Brown and L. H. Holton:

Mr. BROWN: But the honourable gentleman is entirely wrong when he

says we had no power to make this compact with the Maritime Provinces. We had full power, express instructions, to enter into it.

Mr. HOLTON: Did the Parliament of England give you that power?

Mr. BROWN: No; the honourable gentleman ought to know that the treaty-making power is in the Crown—the Crown authorized us specially to make this compact, and it has heartily approved of what we did.

Now these declarations are utterly inconsistent both with the true character of the negotiations and with existing constitutional practice. The Crown did not authorize the delegates at the Quebec Conference to conclude a binding agreement among themselves. All that was sanctioned by the dispatch to Lord Mulgrave was a conference on the subject of a union of the provinces of British North America. There was no grant of powers to conclude a treaty, compact or binding agreement. The colonies of British North America had not acquired in 1864 the right to conclude commercial or political engagements either between themselves or with other countries. The utmost they had achieved during the reciprocity negotiations in 1854 was the dubious privilege of prior consultation before the terms of the treaty were finally arranged. The only further progress towards participation in the making of treaties at this period was a formal undertaking given by Henry Labouchere in 1857 that no treaty affecting the rights of a colony would be concluded without the consent of the colonial legislature. Even in this important feature the treaty analogy is falsified by the procedure adopted with respect to the Quebec Resolutions. As I shall point out presently, these resolutions were never in fact submitted to the Legislatures of New Brunswick or Nova Scotia. Only in the Canadian Legislature did they receive formal legislative approval. They were definitely rejected by the legislature of Prince Edward Island. . . .

In the second place the task of drawing up a new Constitution for the provinces of British North America attached to the function of legislation and did not lie properly within the field of executive action. The Crown, as advised by its Ministers in the several provinces, did not possess constituent powers, and could not authorize or instruct delegates to conclude a binding agreement which contemplated such radical changes in the colonial Constitutions as were proposed by the Quebec Resolutions. In so far as there was a power to alter a colonial Constitution within the provinces that power was legislative in character. Two questions then arise. Did the several provincial legislatures authorize their respective delegations to draw up a scheme of union, and did they subsequently ratify and accept the resolutions which emerged from the Quebec Conference? As to the first question, it is important to observe that so far as the Maritime Provinces were concerned, the provincial delegations were never authorized by their legislatures to consider the proposal for a union of the provinces of British North America. . . .

The next point to consider is whether the Quebec Resolutions, regardless of the manner of their origin, received the subsequent approval of the several provincial legislatures. On this question the evidence is equally conclusive. When delegates were authorized by Nova Scotia, New Brunswick, and Prince Edward Island to consider the narrower project of Maritime Union, it was contemplated that whatever agreement was reached at Charlottetown should receive the sanction of the several legislatures before any attempt was made to implement it by constitutional enactment. In the same manner the delegates at the Quebec Conference agreed to submit the resolutions of that conference for the approval of the several provincial legislatures. It is a matter of historical record that this agreement was never carried out. Only in the legislature of the United Provinces were the seventy-two resolutions submitted for approval and accepted by a majority of the members. In Prince Edward Island the resolutions were rejected by the legislature. In Newfoundland their discussion was postponed to a more convenient season. In Nova Scotia, at the first session following the Conference, Tupper saw that the moment was not propitious for their submission, and deferred action by securing acceptance of a resolution which revived the project of Maritime Union as a necessary step towards the larger scheme. In New Brunswick a general election was held at which the Government sponsoring the Quebec Resolutions suffered a decisive defeat at the polls.

Subsequently, in 1866, the Imperial Government used all the pressure at its command to further the scheme of union, and due in large measure to the tactics pursued by Gordon, the Lieutenant-Governor of New Brunswick, the Anti-Confederate administration in that province was defeated, and following another general election a Government was formed which was favourable to union. But even then, the Quebec Resolutions were not submitted to the legislature. Instead, a course was taken which reveals, I think, the true position of the provinces in the events leading to the passage of the British North America Act. The resolution adopted by the legislature of New Brunswick on the subject of confederation, and the only resolution expressing legislative approval of union, makes no reference whatever to the Quebec Resolutions, but is expressed in the following terms:

That an humble Address be presented to His Excellency the Lieutenant-Governor, praying that His Excellency will be pleased to appoint Delegates to unite with Delegates from the other provinces in arranging with the Imperial Government for the Union of British North America upon such terms as will secure the just rights and interests of New Brunswick, accompanied with provisions for the immediate construction of the Inter-Colonial Railway, each province to have an equal voice in such Delegation, Upper and Lower Canada to be considered as separate provinces.

In other words the Delegation from New Brunswick was appointed

to assist and advise the Imperial Government in arranging terms of union which would secure the just rights and interests of the province. The only express condition attached by the legislature to this representation was the immediate construction of the Inter-Colonial Railway.

The course of proceedings in Nova Scotia is also instructive. Here, too, the Quebec Resolutions were never formally submitted to the legislature. In the beginning the sentiment of the Assembly was distinctly hostile to the proposal for union, and especially to the scheme as set forth in the Quebec Resolutions. The change in opinion was due in large measure to the persistent pressure of the Imperial Government and the sympathetic support of the new Lieutenant-Governor, General Fenwick Williams, a native son who had won fame as the hero of Kars, and whose appointment as Governor was a shrewd move on the part of those who believed his avowed advocacy on confederation would not be without its influence on recalcitrant members of the assembly. The reversal of opinion in Nova Scotia, however, cannot be regarded as favourable to the Quebec Resolutions. Indeed, Mr. Miller, the gentleman who was mainly responsible for the Confederation Resolution as passed by the Nova Scotia Legislature in 1866, made no secret of the fact that his chief object in supporting such a resolution was to prevent the acceptance of the Quebec Resolutions. . . .

From this recital of the events which preceded and followed the Quebec Conference, it is clear that the Resolutions of that Conference were handicapped from the beginning by the bar sinister. Their birth, so far as the Maritime Provinces were concerned, was illegitimate and they were never accorded legal recognition. To recapitulate briefly, up to the meeting of the London Conference in 1866, the Quebec Resolutions had been accepted only by the legislature of the United Provinces of Upper and Lower Canada. In Nova Scotia and New Brunswick they had been abandoned to all intents and purposes, and the only point upon which the legislatures of the provinces were of a common mind was the desirability of confederation provided it could be effected on just and equitable terms. So far as there was any compact, consensus, or general agreement among the legislatures of the provinces, it was confined to the fact of union and did not extend to any specific terms by which that union was to be achieved. It is equally clear that the legislatures of New Brunswick and Nova Scotia agreed to leave the final terms of confederation to the arbitration of the Imperial Government and Parliament, as advised by delegates from the provinces. Further confirmation of this view is found in the fact that the legislatures of these provinces rejected proposals whereby the scheme arranged at London should be referred back to the provincial legislatures for approval before being implemented in legislation by the Imperial Parliament. The true function of the provincial delegations at the London Conference was

advisory in character. The details of the Act of Confederation were left to the imperial authorities with the counsel and assistance of representatives of the several provinces. It is true that the Quebec Resolutions were used at London as the basis of the proposals which were later submitted to the Imperial Government, but this was obviously a matter of convenience since the majority of the Quebec Resolutions were not objected to by the delegates from Nova Scotia and New Brunswick, and it was of tactical importance to Macdonald to be able to assert that the Quebec scheme was the true foundation of the Act of Confederation. There is an interesting sidelight on this point in the account of the discussions at the London Conference. Mr. McDougall, one of the Canadian representatives, asked if the Conference was at liberty to alter the Quebec Resolutions. Mr. Ritchie declared that in the legislature of Nova Scotia it was understood that all matters should be entirely open. The New Brunswick delegates took substantially the same view. Macdonald's cryptic reply is most significant:

We are quite free to discuss points as if they were open, although we may be bound to adhere to the Quebec scheme.

As a matter of fact substantial changes were made in the Quebec Resolutions which were never referred back to the provincial legislatures, but were effected by the authority of the Imperial Parliament. These changes did not relate merely to matters of detail but affected in a very direct way the arrangements between the Dominion and the provinces. It would not be going too far to say that in this respect the entire procedure by which the Canadian confederation was accomplished is without parallel in the history of federal government. There was never any ratification of the actual terms of union either by the legislatures or by the peoples of the federated provinces. As confederation was accomplished in legal form by a statute of the Imperial Parliament, so it was accomplished in fact by the persistent pressure of the Imperial Government on the Governments and legislatures of New Brunswick and Nova Scotia. . . .

Neither the legislatures nor the people of the provinces of British North America had given their consent to the terms of union as set out in the British North America Act. The Canadian Legislature had accepted the Quebec Resolutions, but was not given an opportunity to consider the changes made at the London Conference. The provinces of New Brunswick and Nova Scotia had expressed their desire to be federally united, but approval of the terms of union was expressed not by the legislatures or by the people, but by the Governments of these provinces. The only legislative authority or approval behind the Canadian Constitution was that of the Imperial Parliament. The only agreement of provincial legislatures was confined to the acceptance of the principle of a federal union. The so-called compact

of the Quebec Resolutions is without historical or constitutional basis. The London Conference was an advisory body. There is no inference from the negotiations that amendments of the British North America Act were to be based on provincial consent. The more reasonable position would appear to be that if a province felt itself aggrieved by an amendment proposed by the Dominion Parliament, its representations might be referred to the Imperial Government for consideration before the proposed amendment was implemented by Imperial legislation. Certainly such a procedure would be more consistent with the status of the New Brunswick and Nova Scotia delegations at the final negotiations, and offers the most plausible explanation of the omission of a specific amendment procedure from the British North America Act, assuming that such an omission was deliberate and not due to oversight.

But if the Quebec Resolutions did not constitute a treaty in form or fact, how are we to account for the repeated use of the word 'treaty' by leading members of the Conference? Are we to conclude that regardless of the confusion of thought and language in the debates in the Canadian Legislature the resolutions were intended by the delegates to operate as a binding agreement and that the Constitution to be based upon them was not to be altered except with the unanimous consent of the contracting parties? I have already indicated certain reasons why this view cannot be adopted, but it may be useful at this point to offer a possible explanation of the language used by Macdonald, Cartier, and others with reference to the scheme elaborated at the Quebec Conference. In the first place it is significant that the use of the term 'treaty' as applied to the Quebec Resolutions is confined to the delegates from the United Provinces. I have examined the debates in New Brunswick and Nova Scotia with some care and nowhere do I find that the resolutions were presented in these provinces as a treaty. On the contrary, the subsequent actions of the delegates from New Brunswick and Nova Scotia are entirely inconsistent with the view that they were regarded in this light.

It would appear then that there had been no formal understanding at Quebec that the resolutions should be presented to the several legislatures as a treaty, but that their presentation in this form to the legislature of the United Provinces was simply the result of a ministerial decision to adopt a manœuvre which would ensure their passage with the least possible delay and a minimum of discussion with respect to details. If this view is correct, it deprives the use of the word 'treaty' by Macdonald, Cartier, and others of the significance attached to it by proponents of the compact theory. It is equally important to observe that the language of 'treaty' and 'compact' was introduced before the rejection of the Quebec scheme by New Brunswick and before it became apparent that the resolutions would have to be modified in important respects before the Nova Scotia Legislature

would express approval. This being the case, it seems reasonable to conclude that the use of the word 'treaty' as applied to the Quebec Resolutions in the Canadian Legislature was either purely rhetorical or was adopted as a means of confining discussion to the acceptance or rejection of the resolutions *in toto*. It may be readily admitted that there was an obvious advantage in securing a general agreement on the proposals which should be presented to the Imperial Government as the common views of the provinces at the final conference in London. But even when this is conceded, it does not follow that the constitution growing out of this agreement should be regarded as a treaty or binding compact in relation to any future alteration of its terms. On this point it is pertinent to ask if the conduct of the leading members of the several provincial delegations who afterwards held ministerial office in the Dominion Government is consistent with the view that they regarded the Quebec or London Resolutions as a treaty or compact which could only be altered by the unanimous consent of the contracting parties. The answer to this question brings me to the next stage of my inquiry, namely, an examination of the actual practice which has been followed since confederation in securing alterations of the terms of the British North America Act.

During the past sixty years the terms of the British North America Act have been altered at quite frequent intervals, though not often by the formal process of amendment. It has so happened that revisions of the financial terms of union have usually been accomplished by legislation of the Dominion Parliament and have not involved the statutory amendment of the British North America Act. Nevertheless, when it was proposed to extend better terms to Nova Scotia in 1869, it was argued very forcefully by Edward Blake that this was a substantive change in the terms of confederation and ought to be effected by the process of constitutional amendment, and Mr. Holton, on the second reading of the Bill, moved as follows:

That in the opinion of this House any disturbance of the financial arrangements respecting the several provinces provided for in the British North America Act, unless assented to by all the provinces, would be subversive of the system of government under which the Dominion was constituted.

This resolution, which was in effect a formal enunciation of the compact theory of confederation, was rejected by a Government presided over by Sir John Macdonald and by a House of Commons which included among its members not a few of the delegates who had represented their provinces at the Quebec Conference. It is interesting to note that the division lists reveal that Macdonald, Cartier, Galt, Tilley, and Tupper voted against the acceptance of the doctrine of unanimous consent as set forth in this resolution. Two years later the question of provincial consent was revived during the discussion

of the draft Bill which was proposed to the Imperial Parliament for the purpose of removing doubts as to the competence of the Canadian Parliament to pass the Manitoba Act. . . .

Once more the Government declined to give approval to the principle. The provinces were not consulted, and there was no united protest on their part against the procedure that was followed.

In 1886 the British North America Act was formally amended by an imperial statute pursuant to a Joint Address of the Dominion Parliament. The purpose of the amendment was to enable that Parliament to provide representation in the Senate and House of Commons for the territories. Since this proposal when adopted would have a potential effect on the balance of representation as between east and west, it would appear to have been a matter in which the provinces were vitally concerned, but they were not consulted by the Dominion Government and never gave their consent to the amendment which was enacted by the Imperial Parliament in accordance with the Joint Address.

There is not time to enter into a detailed examination of other amendments of the British North America Act. It will suffice to say that while in certain cases amendments affecting a certain province or a group of provinces have been passed after consultation, as, for example, the amendment of 1930, providing for the return of the natural resources to the western provinces, the only case in which all the provinces were consulted as a preliminary to an amendment was on the occasion of the revision of provincial subsidies in 1907. This precedent has been cited in support of the compact theory of unanimous consent. . . . The precedent of 1907 stands alone. It is without ancestors and without descendants. It was created to meet the special circumstances of a general revision of subsidies payable to the provinces. Hitherto the provinces themselves, individually and by groups, had been quite willing to disturb the financial basis of confederation without invoking the doctrine of unanimous consent. It may be said in all fairness that they had connived at the repudiation of the compact theory whenever it was to their advantage to do so. The Dominion now wished to avoid these periodic disturbances of the financial terms of union, and the summoning of the Dominion-Provincial Conference was for the purpose of obtaining a final and unalterable settlement without incurring the ill will of any province which believed it had legitimate claims against the Dominion Treasury. As Sir Wilfred Laurier expressed it:

We thought we could not do better than have a friendly conference with the provinces, and ascertain what was the most they deemed requisite in order to prevent their coming again to Ottawa and knocking at the door of parliament.

In other words, this method was adopted as a matter of convenience

and was not intended to operate as a formal acknowledgement of the theory of provincial consultation and consent. The Joint Address of the Dominion Parliament upon which the amending statute was based does not differ in form or phraseology from those which have been passed when the provinces have not been consulted. Moreover, there is nothing in the preamble to the Act which suggests that the proposal for amendment had been made after consultation with the provinces. It is equally important to observe that if the 1907 procedure created a precedent for consultation with the provinces, it certainly does not constitute a precedent for the more important aspect of the compact theory, which requires not only consultation but the unanimous consent of the provinces as a preliminary to constitutional amendment. In this case, British Columbia was not a consenting party to the settlement arrived at, but this did not prevent the Dominion Parliament from proceeding with the Joint Address, nor did it prevent the Imperial Parliament from passing the amending Act. To sum up, the practice hitherto adopted with respect to the amendment of the British North America Act is definitely against the implications of the compact theory. The principle of unanimous consent has never been conceded by the Dominion, and where the provinces have been consulted in certain cases this procedure has been adopted as a measure of convenience and has not been conceded as a matter of right. Moreover, with regard to the frequent disturbance of the financial foundations of confederation, the provinces have themselves adopted a position which is wholly inconsistent with the compact theory....

Finally, on grounds of practical convenience the compact theory of confederation is wholly untenable as applied to the conditions existing in Canada. The economic interests of several provinces or groups of provinces are dissimilar. Provincial sentiment slumbers but does not sleep. Differences of race and religion are a potential cause of misunderstanding and friction. A single province sometimes labours under a deep sense of injustice against the Dominion Government. The interests of the extremities of the Dominion are frequently in opposition to the interests of the central provinces. With such elements of instability in the political situation, consider the latent dangers in the doctrine of unanimous consent. If the compact theory were accepted with all its implications, an amendment of the British North America Act might be effectively countered by a single province. The representatives of one hundred thousand people in Prince Edward Island might set at naught the will of nine million in the other provinces. There could be no more effective brake on the development of our national institutions. No adequate means would exist to give effect to the national will. Our Constitution would tend to become rigid at a time when changing currents of social and economic thought call for a serious reconsideration of the distribution

of powers and delimitation of fields of taxation as laid down at confederation. The purpose of unanimous consent is security through stability. But political societies are not static but progressive. If their needs and aspirations grow with the times, stability of constitutional arrangements will produce friction instead of security. It is the virtue of the English Constitution that it can adapt itself readily to any change in the temper of the nation, or any demand for an extension or contraction of the boundaries of political action. With a federal constitution this quality of flexibility is not attainable to the same degree, for the constitution is a written one and necessarily calls for a more formal procedure of amendment. Within those limits, however, which are inherent in federalism, there ought to be an effort to obtain the maximum of flexibility consistent with a reasonable security to the legitimate aims and interests of minorities and provinces. . . .

In this paper I have not attempted to deal with any alternative to the amendment procedure implied in the doctrine of unanimous consent. My purpose has been to reveal the fallacies of that doctrine and to point out the grave dangers that would attend its acceptance. It would appear that federal practice and political expediency call for a limited measure of provincial consultation and consent in the future amendment of the Canadian Constitution, and for definite guarantees with respect to the rights of certain minorities. But that is a far different proposal from the logical implications of the compact theory. The alarming feature of that theory is the doctrine of unanimous consent which has been based upon it. It is essential that an amendment procedure should be adopted in the near future which will set at rest the present uncertainty and make it possible for the will of the Canadian people to prevail in the conscious development of their own Constitution. The first task, however, is to remove the barbed wire that has been set in our path by the proponents of the compact theory of confederation. This must be cut down and destroyed if the major objective is to be attained.

5. REPORT OF THE IMPERIAL CONFERENCE, 1930

(*Summary of Proceedings*, pp. 17-19.)

The Imperial Conference examined the various questions arising with regard to the Report of the Conference on the Operation of Dominion Legislation and in particular took into consideration the difficulties which were explained by the Prime Minister of Canada regarding the representations which had been received by him from the Canadian provinces in relation to that Report.

A special question arose in respect to the application to Canada of the sections of the statute proposed to be passed by the Parliament at Westminster (which it was thought might conveniently be called

the Statute of Westminster), relating to the Colonial Laws Validity Act and other matters. On the one hand it appeared that approval had been given to the Report of the Conference on the Operation of Dominion Legislation by resolution of the House of Commons of Canada, and, accordingly, that the Canadian representatives felt themselves bound not to take any action which might properly be construed as a departure from the spirit of that resolution. On the other hand, it appeared that representations had been received from certain of the provinces of Canada subsequent to the passing of the resolution, protesting against action on the Report until an opportunity had been given to the provinces to determine whether their rights would be adversely affected by such action.

Accordingly, it appeared necessary to provide for two things. In the first place it was necessary to provide an opportunity for His Majesty's Government in Canada to take such action as might be appropriate to enable the provinces to present their views. In the second place it was necessary to provide for the extension of the sections of the proposed statute to Canada or for the exclusion of Canada from their operation after the provinces had been consulted. To this end it seemed desirable to place on record the view that the sections of the statute relating to the Colonial Laws Validity Act should be so drafted as not to extend to Canada unless the statute was enacted in response to such requests as are appropriate to an amendment of the British North America Act. It also seemed desirable to place on record the view that the sections should not subsequently be extended to Canada except by an Act of the Parliament of the United Kingdom enacted in response to such requests as are appropriate to an amendment of the British North America Act.

The Conference on the Operation of Dominion Legislation in 1929 recommended a draft clause for inclusion in the statute proposed to be passed by the Parliament at Westminster to the following effect:

No Act of Parliament of the United Kingdom passed after the commencement of this Act shall extend, or be deemed to extend, to a Dominion unless it is expressly declared in that Act that that Dominion has requested, and consented to, the enactment thereof.

At the present Conference the delegates of His Majesty's Government in the United Kingdom were apprehensive lest a clause in this form should have the effect of preventing an Act of the United Kingdom Parliament passed hereafter from having the operation which the legislation of one State normally has in relation to the territory of another. To obviate this, the following amendment was proposed:

No Act of Parliament of the United Kingdom passed after the commencement of this Act shall extend, or be deemed to extend, to a Dominion *as part of the law in force in that Dominion*, unless it is expressly declared in that Act that that Dominion has requested, and consented to, the enactment thereof.

The delegates from some of the Dominions were apprehensive lest the acceptance of the above amendment might imply the recognition of a right of the Parliament of the United Kingdom to legislate in relation to a Dominion (otherwise than at the request and with the consent of the Dominion) in a manner which, if the legislation had been enacted in relation to a foreign state, would be inconsistent with the principles of international comity. It was agreed that the clause as amended did not imply, and was not to be construed as implying, the recognition of any such right, and, on the proposal of the United Kingdom Delegates, that a statement to this effect should be placed on record.

The Conference passed the following Resolutions:

- (i) The Conference approves the Report of the Conference on the Operation of Dominion Legislation (which is to be regarded as forming part of the Report of the present Conference), subject to the conclusions embodied in this section.
- (ii) The Conference recommends:
 - (a) that the statute proposed to be passed by the Parliament at Westminster should contain the provisions set out in the Schedule annexed.
 - (b) that the 1st December, 1931, should be the date as from which the proposed statute should become operative.
 - (c) that with a view to the realization of this arrangement, Resolutions passed by both Houses of the Dominion Parliaments should be forwarded to the United Kingdom, if possible by 1st July, 1931, and, in any case, not later than the 1st August, 1931, with a view to the enactment by the Parliament of the United Kingdom of legislation on the lines set out in the schedule annexed.
 - (d) that the statute should contain such further provisions as to its application to any particular Dominion as are requested by that Dominion.

6. THE STATUTE OF WESTMINSTER

(*British Statutes, 22 George V, c. 4.*)

An Act to give effect to certain resolutions passed by Imperial Conferences held in the years 1926 and 1930.

Whereas the delegates of His Majesty's Governments in the United Kingdom, the Dominion of Canada, the Commonwealth of Australia, the Dominion of New Zealand, the Union of South Africa, the Irish Free State, and Newfoundland, at Imperial Conferences holden at Westminster in the years of our Lord nineteen hundred and twenty-six and nineteen hundred and thirty did concur in making the declarations and resolutions set forth in the Reports of the said Conferences:

And whereas it is meet and proper to set out by way of preamble to this Act that, inasmuch as the Crown is the symbol of the free

association of the members of the British Commonwealth of Nations, and as they are united by a common allegiance to the Crown, it would be in accord with the established constitutional position of all the members of the Commonwealth in relation to one another that any alteration in the law touching the Succession to the Throne or the Royal Style and Titles shall thereafter require the assent as well of the Parliaments of all the Dominions as of the Parliament of the United Kingdom:

And whereas it is in accord with the established constitutional position that no law hereafter made by the Parliament of the United Kingdom shall extend to the Dominions as part of the law of that Dominion otherwise than at the request and with the consent of the Dominion:

And whereas it is necessary for the ratifying, confirming and establishing of certain of the said declarations and resolutions of the said Conferences that a law be made and enacted in due form by authority of the Parliament of the United Kingdom:

And whereas the Dominion of Canada, the Commonwealth of Australia, the Dominion of New Zealand, the Union of South Africa, the Irish Free State, and Newfoundland have severally requested and consented to the submission of a measure to the Parliament of the United Kingdom for making such provision with regard to the matters aforesaid as is hereafter in this Act contained:

Now, therefore, be it enacted by the King's most Excellent Majesty by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1. In this Act the expression 'Dominion' means any of the following Dominions, that is to say, the Dominion of Canada, the Commonwealth of Australia, the Dominion of New Zealand, the Union of South Africa, the Irish Free State, and Newfoundland.

2. (1) The Colonial Laws Validity Act, 1865, shall not apply to any law made after the commencement of this Act by the Parliament of a Dominion.

(2) No law and no provision of any law made after the commencement of this Act by the Parliament of a Dominion shall be void or inoperative on the ground that it is repugnant to the law of England, or to the provisions of any existing or future Act of Parliament of the United Kingdom, or to any order, rule, or regulation made under any such Act, and the powers of the Parliament of a Dominion shall include the power to repeal or amend any such Act, order, rule, or regulation in so far as the same is part of the law of the Dominion.

3. It is hereby declared and enacted that the Parliament of a Dominion has full power to make laws having extra-territorial operation.

4. No Act of Parliament of the United Kingdom passed after the commencement of this Act shall extend, or be deemed to extend, to

a Dominion as part of the law of the Dominion, unless it is expressly declared in that Act that that Dominion has requested, and consented to, the enactment thereof.

5. Without prejudice to the generality of the foregoing provisions of this Act, sections seven hundred and thirty-five and seven hundred and thirty-six of the Merchant Shipping Act, 1894, shall be construed as though reference therein to the Legislature of a British possession did not include reference to the Parliament of a Dominion.

6. Without prejudice to the generality of the foregoing provisions of this Act, section four of the Colonial Courts of Admiralty Act, 1890 (which requires certain laws to be reserved for the signification of His Majesty's pleasure or to contain a suspending clause), and so much of section seven of that Act as requires the approval of His Majesty in Council to any rules of Court for regulating the practice and procedure of a Colonial Court of Admiralty, shall cease to have effect in any Dominion as from the commencement of this Act.

7. (1) Nothing in this Act shall be deemed to apply to the repeal, amendment or alteration of the British North America Acts, 1867 to 1930, or any order, rule or regulation made thereunder.

(2) The provisions of section 2 of this Act shall extend to laws made by any of the Provinces of Canada and to the powers of the legislatures of such Provinces.

(3) The powers conferred by this Act upon the Parliament of Canada or upon the legislatures of the Provinces shall be restricted to the enactment of laws in relation to matters within the competence of the Parliament of Canada or of any of the legislatures of the Provinces respectively.

8. Nothing in this Act shall be deemed to confer any power to repeal or alter the Constitution or the Constitution Act of the Commonwealth of Australia or the Constitution Act of the Dominion of New Zealand otherwise than in accordance with the law existing before the commencement of this Act.

9. (1) Nothing in this Act shall be deemed to authorize the Parliament of the Commonwealth of Australia to make laws on any matter within the authority of the States of Australia, not being a matter within the authority of the Parliament or Government of the Commonwealth of Australia.

(2) Nothing in this Act shall be deemed to require the concurrence of the Parliament or Government of the Commonwealth of Australia in any law made by the Parliament of the United Kingdom with respect to any matter within the authority of the States of Australia, not being a matter within the authority of the Parliament or Government of the Commonwealth of Australia, in any case where it would have been in accordance with the constitutional practice existing before the commencement of this Act that the Parliament of the United Kingdom should make that law without such concurrence.

(3) In the application of this Act to the Commonwealth of Australia the request and consent referred to in section four shall mean the request and consent of the Parliament and Government of the Commonwealth.

10. (1) None of the following sections of this Act, that is to say, sections two, three, four, five, and six, shall extend to a Dominion to which this section applies as part of the law of that Dominion unless that section is adopted by the Parliament of the Dominion, and any Act of that Parliament adopting any section of this Act may provide that the adoption shall have effect either from the commencement of this Act or from such later date as is specified in the adopting Act.

(2) The Parliament of any such Dominion as aforesaid may at any time revoke the adoption of any section referred to in subsection (1) of this section.

(3) The Dominions to which this section applies are the Commonwealth of Australia, the Dominion of New Zealand, and Newfoundland.

11. Notwithstanding anything in the Interpretation Act, 1889, the expression 'Colony' shall not, in any Act of the Parliament of the United Kingdom passed after the commencement of this Act, include a Dominion or any Province or State forming part of a Dominion.

12. This Act may be cited as the Statute of Westminster, 1931.

C. THE DEVELOPMENT OF THE CONSTITUTION

LAW AND CUSTOM IN THE CANADIAN CONSTITUTION

('Law and Custom in the Canadian Constitution', W. P. M. Kennedy, M.A., LL.B., Litt.D.; Professor of Law in the University of Toronto, in *The Round Table* (Macmillan, London), December 1929, pp. 143-60.)

I

The voluminous literature which has almost necessarily grown up around Canada's external relations has, in some degree at least, tended to obscure the study of the domestic workings of the Canadian Constitution. As a consequence, students of British institutions throughout the Empire have not become as familiar with constitutional phenomena as their intrinsic importance deserves. As in the past, so since 1867, British North America has proved to be an interesting laboratory for constitutional developments. Judicial decisions, constitutional conventions, political customs, unwritten rules and regulations have so changed and modified the British North America Act that it is doubtful if the 'fathers of federation' would to-day recognize their offspring. Indeed, it is not too much to say that some of their fundamental conceptions, guarded, as they thought, carefully in the Act, have not been realized.

It would take us too far afield to examine in detail the purpose behind the Quebec Resolutions of 1864, the Westminster Resolutions

of 1866—purposes which were intended to be translated into law in 1867. One aim, however, must be emphasized. When John A. Macdonald discovered that his outspoken preference for a unitary kingdom could not be realized, and that federalism alone would satisfy the diverse interests concerned, he bent his energies, with apparent support from his colleagues, to give to the new federation as strong a bias towards a unitary system as circumstances would allow. In the distribution of legislative powers the avowed aim, as we shall see, was to strengthen the central legislature. The appointment of the provincial lieutenant-governors lay with the Governor-General in Council—they were to be the servants of the federal Government, to which in addition was given an unqualified power to disallow within one year any provincial Act. The provinces were thus cut off from any legal connexion, such as they had before federation, with Great Britain and the British Cabinet. In other words, the Constitution began with what appeared to the 'fathers' such sufficiently strong central control over the provinces as would render them in their executive and legislative capacities subordinate to the central Government; while the ambit itself of their legislative authority was intended to be such as to leave the vast undefined residuum to the Dominion. *Dis aliter visum.* We now witness on the North American continent singular political developments. The American Republic began with a theory of State rights. To-day, we watch the ever-increasing growth of federal power. Canada began its political existence with the scales heavily weighted in favour of the central authority. To-day, the Canadian provinces enjoy powers greater than those of the States of the American union. In both federations the most cherished aims of the founders have been nullified.

Before examining these Canadian developments, we may well point to certain outstanding forces at work. First of all, the federal idea was never driven to its full logical conclusions. The Senate represents no clear-cut federal principle as in the United States; and consequently the federal idea has sought from, and has been granted by, political parties a place in the other organs of government. Secondly, the Privy Council has interpreted the British North America Act in the strictest terms as a statute. They have refused, as happened until recently in the High Court's interpretation of the Australian Constitution, to allow the importation into the Act of anything not necessarily implicit, to follow American precedents, to see in it anything of a contractual nature, or to be guided by its historical origins. As a statute of the British Parliament they have applied to it arbitrary rules of construction, which, whatever else they have done, have at times robbed it of its historical context and divorced its meaning from the intentions of those who in truth framed it. Finally, the federal party system, organized along provincial lines, has accentuated constitutional custom and judicial decisions in strengthening the initially

strong centrifugal forces of race, religion, and geography. Federalism by its very nature implies a certain looseness in national structure, and Canadian federalism began with many peculiar forces to accentuate the characteristics inherent in the federal political principle. The legal and constitutional developments of the last sixty years have certainly tended to strengthen the fissiparous elements in our national life. We shall notice later the beginnings of what may well become constitutional conventions directed to overcome some of these tendencies. For the moment, however, it is only necessary to point out the general constitutional evolution, and to examine it in some of its most important aspects.

II

We may well begin with the tantalizing central problem of federalism—the distribution of legislative powers. Macdonald fondly hoped that ‘all conflict of jurisdiction and authority’ would be avoided, so clearly did he believe that the subject had been dealt with in the Act. Perhaps to no other aspect of Canadian law have so many discussions been directed; and judicial decisions call for a continual restatement of ‘principles of interpretation’, if we may so characterize the opinions of the Judicial Committee. Certain more or less clear characteristics have emerged. There is, for example, no reserve of legislative power vested, as in the United States, in the people. ‘The whole area of self-government’ is covered—subject, however, to Lord Haldane’s *caveat* that the expression is one which must not be ridden to death, since succession to the Crown, war and peace, secession from the Commonwealth, and possibly extra-territorial legislation lie outside Canadian competency. Then, we are reasonably secure in our principles in relation to the concurrent power over immigration and agriculture, and even in relation to the provincial exclusive power over education. Much litigation in this last connexion has taken place, especially in interpreting the guarantees for ‘denominational schools which any class of persons have by law in the province at the union’. This protection, it is now clear, applies only to schools recognized by law as denominational, and cannot be construed to cover schools which were *de facto* denominational through the presence of scholars professing one faith, or through the teaching of the specific tenets of one religion. In addition, ‘class of persons’ is now judicially defined as persons joined by ‘ties of faith’ and not by ties of race or language. The section of the British North America Act dealing with education has thus achieved a certain clearness of meaning out of many judicial battles. It need not longer detain us, especially as clashes between federal and provincial authority seldom if ever occur. It is in relation to subject-matters other than agriculture, immigration, and education that the fiercest legal controversies have raged to the confounding of Macdonald’s optimistic prophecy.

We shall best accomplish our purpose if we give first a fairly clear statement of the legislative enactment, and secondly some contemporary explanation of its meaning. To the provinces, under section 92, are exclusively assigned sixteen enumerated subjects; and to the Dominion Legislature, under section 91, is given power 'to make laws for the peace, order, and good government of Canada in relation to all matters not coming within the classes of subjects by this Act assigned exclusively to the legislatures of the provinces; and, for greater certainty but not so as to restrict the generality of the foregoing terms of this section, it is hereby declared that, notwithstanding anything in this Act, the exclusive authority of the Parliament of Canada extends to all matters coming within the classes of subjects next hereinafter enumerated'. Here follow twenty-nine enumerated subjects. Reading the two sections together they *appear* to mean that the provinces possess certain defined and exclusive powers, including a general residuary power over all matters, not specifically defined, 'of a merely local or private nature in the province', and that the general residuum belongs to the Dominion; but the exclusive powers given to the provinces may be modified, curtailed, or even destroyed, if judicial decisions in any definite cases draw any of them within any of the enumerated powers granted to the federal legislature. The conclusion also *appears* to follow that the federal legislature may not under its general power substantially trench on subject-matters exclusively assigned to the provinces. Such is the scheme.

Every text-book on Canadian constitutional history is careful to explain its historical origin. The American Civil War seemed to the British North American statesmen to demand important deviations from American federalism, and they deliberately aimed to adopt a plan for the distribution of legislative powers in which the American system would be reversed; the general residuum was to belong to the federal legislature, and not to the provincial legislatures. Contemporary discussions of the scheme make it obvious that this general residuum was intended to cover all subject-matters which in time might become of national importance. Macdonald spoke of the Canadian plan as one in which the federal legislature would control 'the general mass of sovereign legislation'. Viewing the American Constitution, he declared that the new Dominion in taking advantage of American experience had, he believed, avoided the defects 'which time and events have shown to exist in the American constitution', especially in relation to the distribution of powers:

Ever since the union was formed the difficulty of what is called 'State rights' has existed, and this had much to do in bringing on the present unhappy war in the United States. They commenced, in fact, at the wrong end. They declared by their constitution that each State was a sovereignty in itself, and that all the powers incident to a sovereignty belonged to each State, except those powers which, by the constitution, were conferred

upon the General Government and Congress. Here we have adopted a different system. We have strengthened the General Government. We have given the General Legislature all the great subjects of legislation. We have conferred on them, not only specifically and in detail, all the powers which are incident to sovereignty, but we have expressly declared that all subjects of general interest not distinctly and exclusively conferred upon the local governments and local legislatures, shall be conferred upon the General Government and Legislature. We have thus avoided that great source of weakness which has been the cause of the disruption of the United States. We have avoided all conflict of jurisdiction and authority, and if this constitution is carried out, as it will be in full detail in the Imperial Act to be passed if the colonies adopt the scheme, we will have, in fact, as I said before, all the advantages of a legislative union under one administration, with, at the same time, the guarantees for local institutions and for local laws, which are insisted upon by so many in the provinces now, I hope, to be united.

Macdonald's exposition is merely one among many which could be called in aid to prove that on all sides in British North America in 1864-7 the great central principle of Canadian federalism was clearly grasped and carefully expounded. These explanations were not left to the colonists alone. Care was taken that in passing the British North America Act the legislature of the United Kingdom should know the basic idea of the colonial plans to which that Act was to give legal form. The views of the British Cabinet coincided with those of the colonial statesmen, and were made clear by Lord Carnarvon in the House of Lords:

The real object which we have in view is to give to the central Government those high functions and almost sovereign powers by which general principles and uniformity of legislation may be secured in those questions that are of common import to all the provinces; and at the same time to retain for each province so ample a measure of municipal liberty and self-government as will allow and indeed compel them to exercise those local powers which they can exercise with great advantage to the community. . . . In closing my observations upon the distribution of powers, I ought to point out that, just as the authority of the central Parliament will prevail whenever it may come into conflict with the local legislatures, so the residue of legislation, if any, unprovided for in the specific classification which I have explained, will belong to the central body. It will be seen, under the ninety-first clause, that the classification is not intended to 'restrict the generality' of the powers previously given to the central Parliament, and that those powers extend to all laws made 'for the peace, order, and good government' of the Confederation—terms which, according to all precedent, will, I understand, carry with them an ample measure of legislative authority.

Words could scarcely be clearer. In the colonial legislatures, in the British legislature, the method of the distribution of powers was specially explained; affairs common to all the provinces, and affairs, wherever their *locus*, if of national importance, were to lie within the

legislative authority of the federal Parliament, while all other matters of a nature purely local were to belong to the provinces. After such deliberate care we can well understand Macdonald's optimism. Both he and Carnarvon believed that the intention was made abundantly plain that the federation itself would be competent to decide what matters were of national, as distinct from 'purely local', importance. Indeed, Macdonald declared that the powers of the federation were so strong that, in any contest over jurisdiction, it 'must win'.

As soon as the Act began to call for judicial interpretation it would seem that the Privy Council favoured the historical facts. In *Russell v. the Queen* ((1882), 7 A.C. 829), the Judicial Committee upheld a federal temperance Act prohibiting, except under restrictive limitations, the liquor traffic throughout Canada. This opinion seemed to support the view that, if a federal Act were requisite for the 'peace, order, and good government' of the Dominion, it was *intra vires* of the federal legislature, even though it might affect incidentally 'property and civil rights' granted exclusively to the provinces. This position did not long survive before a cumulative series of decisions beginning with *Hodge v. the Queen* (9 App. Cas. 117), and passing down through *Attorney-General for the Dominion v. Attorney-General for Alberta* ((1916), 1 A.C. 588), through *In re Board of Commerce Act*, 1919 ((1922), 1 A.C. 191), to *Toronto Electric Commissioners v. Snider* ((1925), A.C. 396).

The last case especially serves to illustrate how judicial interpretation has divorced the British North America Act from the intentions of 1864-7. It is for our purpose unnecessary to explain in detail the problem before the Privy Council in this case. It is sufficient to say that the legality of the federal Industrial Disputes Investigation Act of 1907 was called in question, under which the federal Minister of Labour was empowered to appoint a board of conciliation to examine an industrial dispute on the application of either party to the dispute, the application to be accompanied by a sworn declaration that, failing adjustment, a lock-out or strike would probably occur. The Toronto Electric Commissioners challenged the federal Act, and after losing by a majority in the Appellate Division of the Supreme Court of Ontario, finally established their point before the Judicial Committee. There emerged from the opinion of that body certain important considerations. Lord Haldane said their Lordships did not think it 'now open to them to treat *Russell v. the Queen* as having established the general principle that the mere fact that Dominion legislation is for the general advantage of Canada, or is such that it will meet a mere want which is felt throughout the Dominion, renders it competent, if it cannot be brought within the heads enumerated specifically in section 91'. In a word, Macdonald's 'subjects of general interest', Carnarvon's 'questions that are of common import', are in their generality deliberately ruled out of the legislative scheme. The

Committee, however, seemed to believe that they must put some meaning on the words of the Act, 'peace, order and good government of Canada', on 'general interest', on 'common import', and they decided, emphasizing their opinion in *In re the Board of Commerce Act*, that these words confined the general residuary power to cases arising out of some extraordinary national peril, where legislation might be required beyond provincial competency. It is to be presumed then that, if the decision in *Russell v. the Queen* is to stand, it must be explained by adding another historical mistake to the situation: drunkenness was a crying national peril in 1882! As a result we are now in the position that the federal legislative powers are normally only those specifically enumerated in section 91, while the provincial powers are equally defined and enumerated in section 92. The Dominion can only invade provincial powers in the valid exercise of its enumerated powers, and the real residuum of powers, except in cases of national peril and calamity, either rests with the provinces under their exclusive power over 'property and civil rights in the province', or is unprovided for in the Act.

The legal situation is apparently entirely divorced from the historical intentions of 1867; and it will be difficult, even in the growing complications of national, industrial, and financial developments, to secure legislative change, since, as is well known, no power lies in Canada to change the British North America Act. Many years ago the British Government laid it down that the legislature of the United Kingdom, with which power alone lies, would not provide substantive and important changes apart from provincial agreement. It is along these lines that developments would appear to lie, and an important constitutional convention may grow up through procedure to which reference has already been made. At present the Government of Canada is discussing with those of Ontario and Quebec legal difficulties arising out of possible clashes of legislative authority in relation to the development of the St. Lawrence. It may be that, in the long run, Canada will benefit by such procedure. Be that as it may, Canada possesses in law to-day a scheme of the distribution of legislative powers which is in its essence diametrically opposed to the conceptions of the 'fathers of federation' and of the British Government of 1867. There is, of course, a grave danger that the centrifugal forces, already numerous enough in Canadian national life, may be accentuated by this interpretation of our constitutional law; and it is significant that Mr. Wallace Nesbitt, in his presidential address before the Canadian Bar Association at Quebec in September 1929, should refer to the need for some sort of consultation and agreement between the federal and provincial Governments with a view to ironing out the chaotic law in relation to legislative authority over companies. Until some such constitutional custom emerges we shall be in the position of accentuating in the legal field those elements in our

national life which hinder national cohesion. The necessity for such a custom is obvious, when we remember that Quebec as a whole, and strong public opinion in the other provinces, oppose any constituent powers being given to Canada. Indeed, no political party would be prepared to father such a proposal unless accompanied by legal guarantees for provincial agreement in relation to proposed changes. Sober realism will support that position. It would tear the Dominion into fragments were any unqualified constituent powers granted; and no one ought to be moved by doctrinaire arguments. If law is to reflect social values and interests, as indeed it ought, we can arrive at such a position in the constitutional law of Canada by developing, before enacting changes, the British tradition of custom and convention through honest consultation and generous discussion between the federal and provincial authorities. We have indeed gone far legally from the conceptions of 1867. In the interests of national unity we can perhaps retrace our steps only along such lines—which may prove ultimately more beneficial.

III

Leaving then this great central problem, we may now survey somewhat more cursorily other important aspects of the evolution of our constitutional law and custom. First of all, it is interesting to note how legal decisions have made clear the essential nature of all Canadian legislatures which deal with the tangled scheme of legislative subject-matters. No legislature in Canada is in any sense a delegate or agent—the federal legislature from the legislature of the United Kingdom, the provincial legislatures from the legislature of the United Kingdom or of the Dominion. Every legislature in Canada, acting within its legislative sphere, is sovereign; its powers are ‘exclusive’, ‘supreme’, ‘absolute’. The courts must, as in any federal country, resolve clashes of legislative powers; but given the legal power to legislate on a subject-matter, that power is unquestioned and can be delegated by the legislature to subordinate bodies with coercive authority. In addition, once there is clearness in relation to legislative control over any subject-matter, no court can question the wisdom or morality of the legislation. Parliamentary supremacy is the great central principle of Canadian federalism. To paraphrase Blackstone: What a Canadian legislature, acting within its proper ambit, does no power save itself can undo.

In this connexion an important aspect of constitutional life emerges, since the provinces are given exclusive powers to amend ‘from time to time, notwithstanding anything in this Act, the constitution of the province, except as regards the office of lieutenant-governor’. Important changes have been made, but interest centres round the use of the initiative and referendum, especially in the western provinces. It was believed in 1919 that difficulties had disappeared when the

Judicial Committee decided that the Manitoba Initiative and Referendum Act was *ultra vires* as an interference with the office of lieutenant-governor ((1919), A.C. 935). The issues have, however, been indirectly reopened. The Alberta Liquor Act was passed under conditions laid down by the Alberta Direct Legislation Act. A case arose under the Liquor Act and finally came before the Judicial Committee, which upheld the legality of that Act. The method by which it was passed under the Direct Legislation Act was not before that body; but it may be that it is legal for a province to proceed to legislation after the electors have outlined a Bill by a popular vote. If this deduction from the opinion of the Committee is valid, we may witness constituent changes in the provinces somewhat effectively divorced from the traditional procedure of building up a law through various readings and detailed discussion in committee. The whole thing reflects the dying influences of Jacksonian democracy, and it would seem that, if persisted in, the principle of parliamentary Cabinet government may suffer. We are informed that a reaction has set in. Be that as it may, it is abundantly clear that the Cabinet system cannot be driven in double harness with any form of the initiative and referendum, except to its hurt and detriment, if not to its ultimate confounding.

We may now pass to the problem raised by the question of the rights and privileges of the Canadian legislatures. In itself, perhaps, it is not of vast importance to-day; but the evolution of the law illustrates constitutional growth. It is, of course, well established by judicial decision that the peculiar privileges of the legislature of the United Kingdom belong to the *lex et consuetudo parliamenti*, and that a subordinate colonial legislature cannot appropriate them apart from legislation. The British North America Act of 1875 has defined them for the federal legislature. In connexion with the provincial legislatures an amazing round of controversy lasted from 1867 to 1896; and cases, decisions, statutes followed one another with tantalizing perversity, in which the idea predominated, under the influence of John A. Macdonald, that these legislatures should not be allowed too much power, should be treated, in current parlance, as 'big county councils'. In 1896 the Privy Council finally decided in favour of the provinces (*Fielding v. Thomas*, A.C. 600), and to-day these have defined the rights and privileges of their legislatures in statutes of undoubted legality. Indeed, in 1920 the legislature of Quebec, not content with the traditional punishment for contempt, passed a special Act imprisoning a recalcitrant newspaper editor for one year in the common jail, a judge of the Superior Court of Quebec and a judge of the Supreme Court of Canada refusing a writ of *Habeas Corpus*. An application was made to the federal Government to disallow the Act, but, before a decision was reached, the editor purged his contempt and was released.

The matter of the disallowance of provincial Acts by the federal Government has long been a source of constitutional struggle, and we may well review it somewhat closely. The British North America Act grants to the Governor-General in Council a general and unqualified power to disallow within one year any provincial Act. The power was doubtless given, first, to correspond to an analogous one in the hands of the British Government over federal legislation, and secondly, as Cartier himself declared in 1865, to provide against 'unjust and unwise provincial legislation'. Whatever the original motive—and it seems clear that Macdonald's 'unitary' bias cannot be forgotten—federation began and continued for many years with a clear-cut purpose of treating the provinces as distinctly subordinate to the Dominion, as municipalities; and provincial legislation was disallowed as unjust, as inequitable, as immoral, as unsound in principle, as destructive of private and contractual rights—the federal Minister of Justice virtually becoming a moral censor of much provincial legislation. The problem of the legality of legislation was usually, though not always, left to the courts. For a considerable time we can trace definite moral judgements in the reports of the Minister of Justice advising the disallowance of Acts fully *intra vires* the provinces.

In 1892 began the judicial definitions already referred to of the absolute and sovereign nature of provincial legislative powers, the abuse of which could not legally be asserted as a limitation on them, and against such abuse, as Lord Herschell said, 'the only remedy is an appeal to those by whom the legislature is elected'. From that period may be noticed a new principle at work, defined and consolidated during the years 1906 to 1911. The Minister of Justice refused to disallow provincial Acts, no matter how flagrantly and obviously unjust, oppressive, or outrageous they might be, provided the province concerned had power to pass the Acts in question, and that was a matter for the courts. Up to 1923 this principle, on the whole, prevailed. In that year the Minister of Justice advised the exercise of the power of disallowance in relation to an Act of the Nova Scotia legislature, not because it was *ultra vires*, but as being of a most improper and unjust nature—which was evident on the face of it—and, more interesting still, as overriding a judgement handed down by the Supreme Court of Canada. Thus we have the revival of an idea which was considered obsolete—the disallowance of legislation fully *intra vires* the province because the power had been abused—and that revival has been coupled with the extraordinary and novel reason that a legislature acting within its undoubted legislative competency must not reverse the judgement of a court: a conception totally opposed to the principle of parliamentary sovereignty which, as we have seen, is fundamental in our jurisprudence. This episode may not lead to any further developments; but it would seem that here may be another sphere in which consultation and discussion may

be forced into conventional constitutional procedure, if we are to escape the reopening of old issues, from which the provinces, already strong by virtue of judicial decisions, would be bound to come forth with increased prestige.

Space will not permit more than a casual reference to executive power. It is hardly necessary to recall, in connexion with the formal and legal federal executive, that various changes have been made in the instruments connected with the office of Governor-General; but no changes have legally transformed him from being a governor into a viceroy. He is still a man acting under instructions; he does not possess the full prerogatives of the King; he enjoys none of the legal immunities belonging to vice-royalty. Not a single legal change has been made. On the other hand, conventions grow apace. In 1888 Macdonald emphatically opposed the idea that the Canadian Government should be consulted or asked for advice in relation to his appointment. To-day consultation is the normal thing. Legally he is the old governor of 1879, when under Edward Blake's influence the instruments of his office were reformed; in convention and custom he is a viceroy guided by the agreements of the Imperial Conference of 1926. In the provinces the office of Lieutenant-Governor has acquired important legal support for its dignity and authority. He can still be legally dismissed by the Governor-General in Council for reasons disclosed to Parliament and outside judicial review; but he is not a servant of the Dominion, a mere instrument of the federal Cabinet, as Macdonald, with his favourite conceptions of the federation paramount, meant him to be. Once legally appointed and during his tenure of office, he is the representative of the Crown, endowed with all the executive power necessary for carrying on the government of his province. He enjoys as full and ample executive authority within the provincial sphere as the Governor-General within the federal sphere.

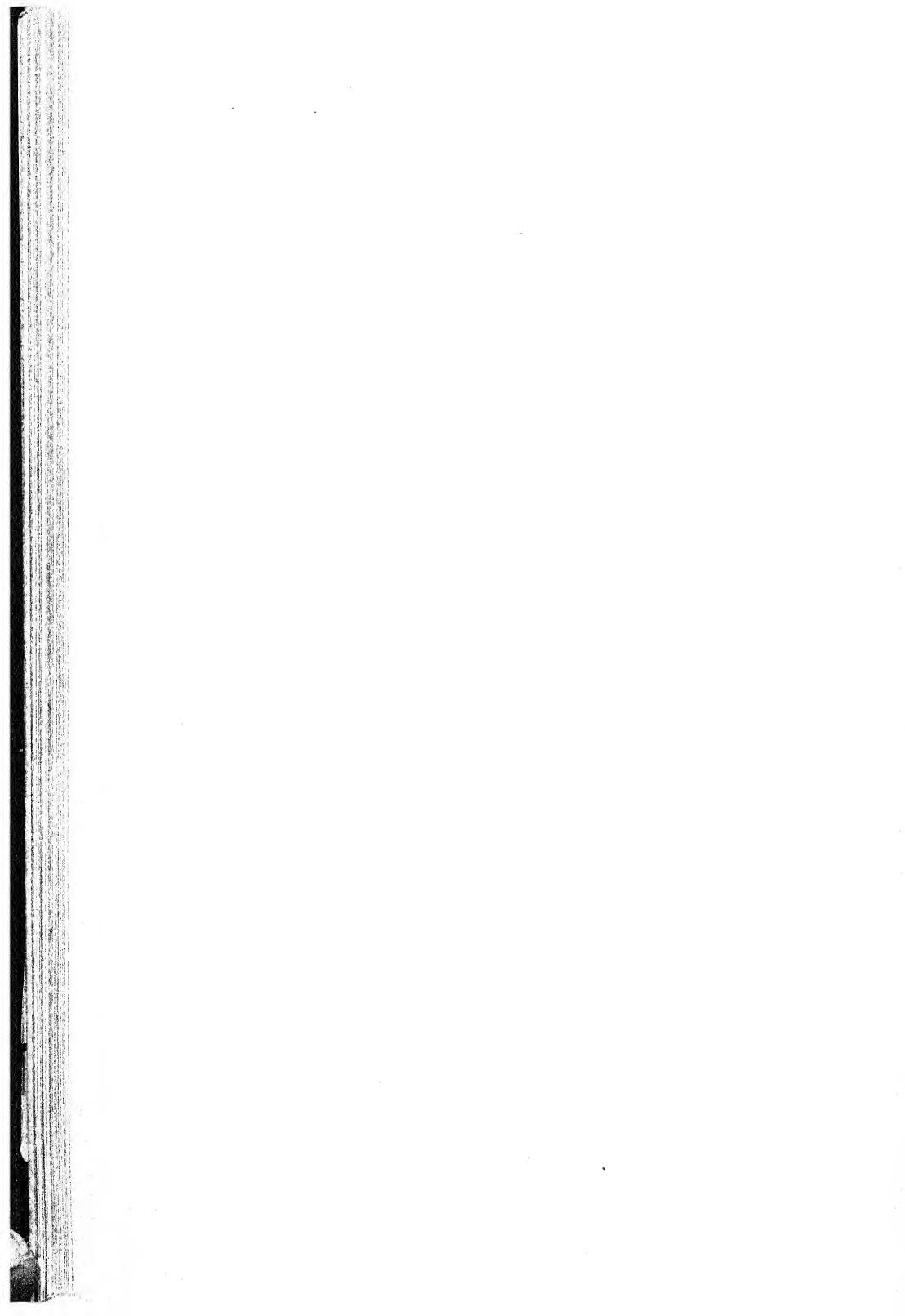
In relation to the informal or real executive, the Cabinet, we may note certain conventions which have almost the force of constitutional law. The Prime Minister of Canada is not free as is the Prime Minister of the United Kingdom. The 'fathers of federation' in truth failed in the type of second chamber which they created, and, as we have seen, the federal idea was not realized in the national legislature. As a consequence, the federal Cabinet has assumed, from the first Cabinet of the Dominion until to-day, a federal aspect. Thus a condition has prevailed and developed which was foretold in 1865 as a necessary outcome of the lack of a real federal principle in the organization of the Senate. Nor has convention stopped there. The French-Canadians, Anglo-Saxons in Quebec, and Roman Catholics in other provinces have more or less established claims to representation in the federal Cabinet, which has become since 1867 a reflection of provincial or territorial, religious and racial groupings. In other

words, the executive government, specially placed in power in the interests of the nation as a whole, is generally a balancing of interests which calls for political legerdemain of the most skilled order. A Prime Minister may find himself forced to choose a colleague because he is the sole supporter of his party in some province or group of provinces, although his claim to Cabinet office is merely the uniqueness of his position. He may find himself forced to select some one on account of his race or religion who brings to the council chamber neither executive experience nor political wisdom, neither national outlook nor the capacity for it. A federal Cabinet may thus become a strange and fortuitous Noah's Ark; and Macdonald lived to declare that men must be chosen on the basis of capacity alone. However guileless his intentions, neither he nor his successors shook off his own initial type of Cabinet organization, until to-day no Prime Minister, no party could afford even to attempt change. The federal Cabinet is a compromise, a blending; and for better or for worse we appear likely to continue to tolerate a national executive which is only national in name and is held together merely by the ties of office. The amazing thing is the high average of success which we have achieved. Indeed, it may be that the common statement that we were the first to succeed in combining federalism and parliamentary government has only been proved true because we have been forced to federalize the national Cabinet.

In conclusion, something may be said from the purely domestic angle of appeals to the Privy Council, which go by special leave of that body from the Supreme Court of Canada, and from the provincial courts by leave or as of right. The exact details need not concern us. We must note, however, some important facts. First, the legal profession is almost unanimous in favour of preserving appeals to the Judicial Committee, and in this they have the support of the province of Quebec, which professes to look on that body as the peculiar guardian of its rights. Again, there is a strong majority among English-speaking Canadians who, supporting the legal profession and Quebec, see in the Judicial Committee either a tie of Empire, or, by a distortion of history and fact, the channel for 'the immemorial right of approach to the footsteps of the throne', or an excellent safeguard of justice, in a nation so distinctly marked by strong religious, linguistic, and racial differences. It is also true that the strengthening of provincial 'rights' by the Judicial Committee has been an important factor in increasing respect for it in a country where local allegiances are unfortunately apt to overshadow the national point of view. Whatever real worth there may be in all these reasons, they at least disclose a singular lack of confidence in the objectivity of the Canadian judiciary, and one which is on the whole entirely unjustified. On the other hand, the body of doctrinaire theorists, who are constantly harping on the 'limitations of Canadian autonomy', are strengthening

their position by pointing out the 'foreign' nature of the Committee, by emphasizing how appeals constitute a general condemnation of the skill and efficiency of Canadian judges, and, what is more to the point, by laying stress on the obvious fact that their perpetuation is 'class legislation' in the interest of the wealthy suitor at the expense of poorer litigants. We must say honestly that there is no wide demand for change, and we do not believe that any party would lightly make the question a political issue. In the minds of nearly all Canadians there is an undefined fear owing to our peculiar organization; and many practical men, who would on sound reasons support the doctrinaires, shrink from public expression of opinion, lest change should in some way, indefinitely conceived, further complicate our social and political structure. When the whole matter is cleared from cant, it is obvious that appeals survive because the vast majority of Canadians wish them to survive. There is, however, a growing opinion against them, more obvious to-day than, say, before the Great War; and there is a stream of sentiment welling up from the sources of the 'autonomy complex'. We believe this latter situation may become dangerous, as political opinions nourished on doctrinaire reasons are peculiarly noxious. It might be the course of wisdom to hoist these opinions on their own petard by the passing of a permissive British Act allowing Canada to control appeals by Canadian legislation. We do not believe that any action under such an Act would be taken in Canada at present or for years to come; but such a course would rob criticism of its dangers, and would throw the onus of change on Canada itself. Our greatest snare to-day is seeking to extend autonomy for purely theoretical reasons. This matter, however, overflows into the problem of external relations, of whose discussion we have indeed had God's plenty.

CHAPTER TWO
THE GOVERNOR-GENERAL



THE GOVERNOR-GENERAL

'Once,' said the Mock Turtle at last, with a deep sigh,
'I was a real Turtle.'—*Alice's Adventures in Wonderland*.

THE Governor-General, like the King in Britain, has always been the central figure in the Government of Canada. His history, like that of his illustrious prototype, has been a steady, unsensational, rather reluctant progress from virtual dictatorship to virtual impotence. It is incorrect, however, to think of the journey as a solitary, pioneering adventure. The King had gone over the ground many years before; the American Governors of the pre-revolutionary period had travelled a part of the same route; the Governors of the other Dominions have always been within hail; while the World War has brought about the active co-operation of the Imperial Government in surmounting the last few difficulties.

The progress has been almost continuous; but on looking back certain landmarks stand out from the others. The earliest threat to the Governor's power was made in Nova Scotia in 1758 by the summoning of the first Assembly—a body which immediately began to cause trouble for its master and eventually destroyed him as an effective part of the legislature. The achievement of responsible government in the middle of the last century enormously weakened the Governor's second entrenchment, the executive power, which up to that time had been shared in a varying degree with the irresponsible Executive Council. A legislature, which had hitherto been little more than a negative check on the Governor, now became through its representatives in the Ministry so positive a force that the real executive authority in most matters passed into the hands of the Cabinet. The transfer, however, was by no means complete, and many incidents later occurred which showed that the Governor's residue of power was far from negligible. Premiers were denied dissolution in 1858 and in 1860; the refusal of prorogation was actively discussed at the time of the Pacific Scandal in 1873; Lord Dufferin exercised the prerogative of pardon in 1875 entirely on his own responsibility; Lord Aberdeen declined in 1896 to make appointments recommended by Sir Charles Tupper after the latter's defeat at the polls; and recommendations for honours were frequently made at the instigation of the Governor alone.

The general movement, however, was steadily in the opposite direction. The specific grants of the Governor's authority¹ and those powers which were his through usage were either formally altered (e.g. by changes in the Commission and Instructions in 1878) or, more commonly, quietly abandoned. Precedents fell rapidly away on the one side and multiplied on the other. The driving force behind the movement was the insistence by the Canadian people on a greater measure of self-government. This attacked the position of the Governor-General from two directions: the desire for a more democratic control of the Government necessarily weakened his position as its only irresponsible element, while at the same time the growth of national autonomy narrowed his functions as an Imperial officer. At the conclusion of the World War it was generally admitted that the functions of the Governor-General as head of the Government had become largely social, the chief exception being his duty 'to advise, to encourage, and to warn' his Ministry on any political matter. His functions as an Imperial officer were still moderately important, but their continued existence had become somewhat doubtful (Section I).

This peaceful scene was violently disturbed by Lord Byng's refusal in 1926 to grant a dissolution to Mr. Mackenzie King—a refusal dictated, beyond question, by the worthiest of motives, but showing an ignorance of constitutional usage which is almost impossible to credit (Section II). The incident furnished an excellent illustration of the folly of placing an undue reliance upon precedent alone, particularly if it was to be interpreted by one who did not understand what it all really signified. More important, however, the dispute spurred the Imperial Conference of 1926 to action, with the result that the Governor-General of to-day has been shorn of many of his legal powers as head of the Canadian Government; he has ceased to be an Imperial officer and the medium of communication between the Governments; and he has become virtually a Viceroy, the personal representative of the King, chosen on the direct advice of the Canadian Cabinet. Canada, like Britain, has now her 'Crown upon a cushion' (Section III).

¹ e.g. those in the British North America Act, 1867, sections 12, 55, 57, and in the Governor's Commission and Instructions.

I

THE GOVERNOR-GENERAL BEFORE THE WAR

A. EULOGY OF EARL GREY BY SIR WILFRID LAURIER

(*Canadian House of Commons Debates*, May 3, 1910, pp. 8737-9.)

Rt. Hon. Sir WILFRID LAURIER (Prime Minister): By your leave, Mr. Speaker, I would beg to interrupt the order of proceedings which is laid down on the programme of this day in order to remind the House that the term of office of His Excellency the Governor-General is fast drawing to a close and that when we meet again at the opening of the next session he will no longer be with us and His Majesty will have selected another person to be his representative in this country. There is, I have reason to believe, a unanimous wish in this House that ere we separate we should convey to His Excellency an expression of our high appreciation of the great services he has rendered to this country whilst he has had the honour of being the representative of His Majesty. The observation has on more than one occasion been made that Canada has been extremely fortunate in the character of those who since confederation have held the high office now held by His Excellency, and the five years of his stay with us I am sure will give still more prominence to this prevalent opinion. From time to time in recent years paragraphs have appeared in the press to the effect that at the present stage of Canadian development it would be fitting that a Canadian should be representative of His Majesty. In this we find the expression of a laudable, but to my mind, a misguided expression of national pride. The system which has been in operation since confederation of His Majesty appointing to be his representative in this country some of the great names of Great Britain has worked most harmoniously and most satisfactorily, and any change in that system would not, I am sure, be productive of good results, but perhaps on the contrary would jeopardize something which we hold dear. The first effect of this system of having some high statesman of Great Britain to be the representative of His Majesty in this country has undoubtedly been to strengthen if possible the ties which bind us to the motherland and to keep them constantly before the hearts of the people. The next effect is to place at the head of the administration one who by the very nature of things is not connected with our party or political differences, and who by the same nature of things is more apt than anybody else to keep even the balance between all contending parties. The other value of the system is to ensure the presence at the head of the political administration of one who from early youth has been bound to public life and who has had the advantage of experience of constitutional government in the country where constitutional

government originated, and where it is best understood. In these respects His Excellency was pre-eminently qualified. The name which he has the honour to bear, the name of Grey, may have equals, but it has no superiors in the long list of statesmen who for ages have been connected with the history of constitutional government in Great Britain, and His Excellency proved a worthy addition for he had a distinguished career not only in England, but in some distant parts of the Empire. So in his case it was pre-eminently a case of *noblesse oblige*, and from the very day he landed on our shores it is a matter of history that he gave his whole heart, his whole soul, and his whole life to Canada. Canada became the all-absorbing object of his thoughts. He was not satisfied, as every one knows, to give to the discharge of his official duties the most careful and close attention, but he associated himself with everything that went to make the national life of Canada. His constant object was to advance and to elevate the national character in everything, and in all the human speculations which go to make up the highest expression of civilization. It is nothing but justice to say that under his wise and generous guidance the arts, letters, and the sciences have received a notable impetus. In the matter of science especially he gave the most careful attention and was diligent and active in that branch which is connected with public health, and it is due to his efforts, not only his own efforts but to the efforts of those associated with him, that a disease has been checked which levied every year a large tribute, the disease that is known as tuberculosis. But if anything were the characteristic of the career of His Excellency amongst us, I would say it was the particular attention he gave to the study of our own history. The conception was his and his alone which resulted in the establishment of the Battle-fields Commission, the effect of which will be to consecrate and to hallow the ground around the city of Quebec which has been marked by the most dramatic events in our history. But we should not forget the graceful and noble companion of his life. The Countess Grey associated herself readily with all the efforts of her illustrious husband to promote the Canadian welfare.

B. CRITICISM OF EARL GREY

(By John S. Ewart, in a letter to the *Ottawa Evening Journal*,
March 18, 1911.)

Editor, Journal:

The King of Canada is the King of other places, and cannot be in more than one of his kingdoms at the same moment. For that reason, he remains in the most important of his realms, and is represented by Governors in the other places; and those Governors are expected to act as the King himself would act were he personally present.

Not so very long ago, British Kings diligently engaged not only in administration, but in legislation. The King had policies of his own,

and so far from concealing them, he publicly advocated them and urged their adoption. The third George was the last of that sort. Most probably there will never be another.

The earlier Canadian Governors, like the earlier Kings, had their policies and opinions. They hated all extension of colonial self-government, and most particularly the culmination of it in responsible government; they fought openly and vigorously against all political development; and they succeeded in keeping Canada for years in ferment because of their opposition to the right of Canadians to govern themselves. In an election manifesto, Sir Francis Bond Head (he who, as Governor of Upper Canada, provoked the rebellion of 1837) declared that it was his duty 'above all, to resist the smallest attempt to introduce that odious principle of "responsible government" which a few republicans in the provinces had been desirous to force upon them'; and he asserted that 'the interests of our colonies should be of subsidiary importance to the great paramount interests of the Empire'. Gubernatorial influence and flag-waving (Head placed special value upon that) won the elections of 1836, but very shortly afterwards Sir Francis found that among his 'republican' enemies he had to count Lord Durham (the new Governor-General) and the Colonial Office itself.

Head was the George III of Canada. Constitutionalism has ousted the methods of these men. They may reign—the King and the Governor—but they must not govern, nor attempt to govern. Vital as may seem to them the importance of subjects under public discussion, their duty is impartiality and silence. Upon that basis alone, are they permitted to reign at all.

It has always been difficult, even for the more recent Canadian Governors, to remain passive. They come to us actuated by the best of motives, but certain of the possession of qualifications which Canadians cannot be expected to enjoy, and of ideas that ought to be implanted and encouraged and fostered among their people. Some of them, in time, have ascertained that they were wrong; others have stubbornly fought for their opinions; none of them have learned without difficulty the tiresome duty of reticence and reserve; all of them have disliked criticism; and if, upon the whole, we have not had, in recent years, very much to complain of, we must credit our comparative freedom from interference to their willingness to modify their methods when attention has been called to their transgressions.

To find fault with Lord Grey is a most disagreeable of duties, and probably the most unpopular task that any one could undertake. He has won not only our respect and our admiration, but (if I may be permitted to say so) our affection. This letter will probably still further increase his popularity, for people are loyal to those they esteem, and resent the best founded and best intended criticism. I shall be well content with such result if another effect of my action is

to secure for Canada a more careful regard for her freedom to think for herself.

Lord Grey's imperialism is part of himself. His enthusiastic nature knows no hesitation and recognizes no impracticability. He believes in Imperial federation; in contributions to the British Admiralty; in universal military training; in tariff reform; in Imperial preferences, and so on. In short he is a perfervid Imperialist. His dearest wish is to bind Canada politically and above all, for war purposes, to the United Kingdom.

I do not intend to discuss whether Lord Grey's ideas are good or bad. It is sufficient, for my present purpose, to say that Canadian opinion is divided upon the subject of Imperialism; that this advocacy of federation appeals but to a small minority of our people; that there are not many who concur in his views respecting money contributions to the British Admiralty; that very few of us would agree to universal military training; that while, probably, a good many would unthinkingly vote for military support to the United Kingdom, no matter where the war or what its cause, those of us who have studied the subject and know its history, agree that an attitude of reservation of our right to act as we think proper when the occasion arises is the only correct one under present circumstances; and that upon this last point the policy of the present Government has been officially declared to be that which Lord Grey thinks it ought not to be.

I do not argue the merits of those questions. All I say is (with profound respect) that they are points to be decided by the Canadian people; that it is inconsistent with Lord Grey's position as representative of our King that he should take part in the discussion of them; and that he ought not to be the centre of a propagandism which runs counter (as I believe) to our historic development and which is fundamentally opposed to the wishes of a large number (I believe a very large majority) of our people.

At the present time Lord Grey is supporting with his great social influence the 'Overseas Club'. He is distributing applications for membership and asking our people to sign their adhesion to the 'Creed and Objects' of the Club. Naturally he has met with some refusals, but no doubt he has secured a good many signatures of people who, not having carefully considered what the 'Creed' and 'Objects' imply, may be afterwards influenced, if not embarrassed, by their action. That is not the work of a Governor-General. . . .

I discuss none of these questions (of 'Creed' and 'Objects'). My point, and my only point, is that they are matters to be settled by the Canadian people and (with proper deference) that our Governor-General ought not to take either one side or the other.

Some Imperialists will not agree with what I have said. They will urge that Lord Grey's views are right. I reply that that is not the point. If Lord Grey advocated Nationalism, I should say that his

views were right, but I should agree that advocacy of them by him was wrong. It may be said that the questions involved are of the highest and most vital importance. That is true. But His Excellency is precluded by his office from discussing them. The only argument in favour of appointing an Englishman rather than a Canadian to the headship of our Government is that he is supposed to be able on that account to act a more impartial part, and to keep more aloof from political strife.

Finally, it may be urged that the questions involve our Imperial relations; that the Governor is an Imperial officer; and that one of his duties is to do all that he can to 'keep the Empire together'. But the plea is insufficient. The King is the highest of Imperial officers, and of him pre-eminently we may say that it is his duty to maintain the integrity of the Empire. But nevertheless he must not enter into public discussion. His function, and his only function, is 'to counsel and to warn' his Ministers.

For example, it is the contention of one of the British political parties that Home Rule for Ireland means disruption of the Empire. The King may so believe, but he would shake his throne if he associated himself with Arthur Balfour and Walter Long. Again, tariff reformers affirm that the very speedy adoption of a system of Imperial preferences is an essential requisite of the perpetuation of the Empire. The King may share that opinion. But he would end his dynasty if Buckingham Palace co-operated with the Tariff Reform League.

Sir Francis Bond Head was quite certain that responsible government meant separation from the British Crown. There is (he said) 'a considerable section of persons who are disloyal to the Crown; reform is on their lips but separation is in their hearts.' And he justified his activities upon the ground that the Governor was responsible for his actions to Her Majesty 'and not to Her Majesty's colonial people'. But the plea was not sufficient to save him from popular remonstrance and from official rebuke.

Sir Francis was (as we all now know) absolutely wrong. I believe, and I am convinced that a large majority of Canadians believe, that Lord Grey is wrong. His official superior, the British Government itself, does not sympathize with him. To my mind Imperialism has been, and is, the chiefest obstacle to Canadian Nationalism and to the creation of that national sentiment which we so conspicuously lack and which at some early day we may stand much in need of. But I express this opinion only for the purpose of indicating the wide divergence of opinion upon the point, and I do not now argue it. If we all agreed with Lord Grey, his advocacy would be unnecessary. He is active because he believes that many of us are wrong. With great respect, I submit to him that he ought to leave us alone.

JOHN S. EWART.

OTTAWA, March 17, 1911.

II

THE CONSTITUTIONAL ISSUES OF 1926

(After the general election of 1925 the Liberals found that the number of their seats in the Commons had been reduced to 101; while the Conservative seats had risen to 116; the Progressives had carried 24; Labour, 2; and Independents, 2. Such a condition, where no party had a majority, had never arisen in the Dominion Parliament before. The Prime Minister, Mr. Mackenzie King, who was personally defeated together with several members of his Cabinet, refused to resign until Parliament had met and expressed its wishes in the matter. He called Parliament together at the earliest moment, and announced meanwhile that he would consider his position provisional only, that he would make no unusual expenditures and no important appointments (in view of the Tupper-Aberdeen incident of 1896), and that he would confine himself as far as possible to routine business. Parliament met, and the Government was sustained by the votes of the Progressives. The Prime Minister secured a seat, filled up his Cabinet vacancies, and assumed full control as before.

The session continued for almost six months with the Government carrying on with a slim majority, but without a defeat. Before the close of the session, however, a Special Committee of the House which had been investigating the Customs service disclosed grave irregularities in that department, and a vote of censure on the Government was moved in the Commons. Whether this vote would have been passed or not is a disputed point, but in any event the Prime Minister did not wait to find out, but advised the Governor-General to dissolve the House. The advice was refused, and Mr. Mackenzie King resigned in protest. Mr. Meighen thereupon became Prime Minister and formed his famous 'acting ministry' to avoid the by-elections which would have been imperative if the Ministers had accepted offices of emolument under the Crown. The 'acting ministry' was defeated and censured in the House after two and a half days. Mr. Meighen in turn advised dissolution, and the Governor agreed. The ensuing election resulted in the return of the Liberal party with an absolute majority of the seats in the Commons.)

A. RESIGNATION OF THE KING GOVERNMENT

I. CORRESPONDENCE BETWEEN THE PRIME MINISTER AND THE
GOVERNOR-GENERAL

(*Canadian Sessional Papers, 1926-7, No. 91.*)

His Excellency

Ottawa, June 28, 1926.

The Right Honourable The Baron Byng of Vimy, G.C.B., K.C.M.G.,
Governor-General of the Dominion of Canada, Ottawa.

My dear Governor-General,

Your Excellency having declined to accept my advice to place

your signature to the Order in Council with reference to a dissolution of Parliament, which I have placed before you to-day, I hereby tender to Your Excellency my resignation as Prime Minister of Canada.

Your Excellency will recall that in our recent conversations relative to dissolution I have on each occasion suggested to Your Excellency, as I have again urged this morning, that having regard to the possible very serious consequences of a refusal of the advice of your First Minister to dissolve Parliament you should, before definitely deciding on this step, cable the Secretary of State for the Dominions asking the British Government, from whom you have come to Canada under instructions, what, in the opinion of the Secretary of State for the Dominions, your course should be in the event of the Prime Minister presenting you with an Order in Council having reference to a dissolution.

As a refusal by a Governor-General to accept the advice of a Prime Minister is a serious step at any time, and most serious under existing conditions in all parts of the British Empire to-day, there will be raised, I fear, by the refusal on Your Excellency's part to accept the advice tendered a grave constitutional question without precedent in the history of Great Britain for a century and in the history of Canada since Confederation.

If there is anything which, having regard to my responsibilities as Prime Minister, I can even yet do to avert such a deplorable and, possibly, far-reaching crisis, I shall be glad so to do, and shall be pleased to have my resignation withheld at Your Excellency's request pending the time it may be necessary for Your Excellency to communicate with the Secretary of State for the Dominions.

I am, Your Excellency,
Yours very sincerely,
(Sgd.) W. L. MACKENZIE KING.

Government House,
Ottawa, June 29, 1926.

My dear Mr. King,

I must acknowledge on paper, with many thanks, the receipt of your letter handed to me at our meeting yesterday.

In trying to condense all that has passed between us during the last week, it seems to my mind that there is really only one point at issue.

You advise me 'that as, in your opinion, Mr. Meighen is unable to govern the country, there should be another election with the present machinery to enable the people to decide'. My contention is that Mr. Meighen has not been given a chance of trying to govern, or saying that he cannot do so, and that all reasonable expedients should be tried before resorting to another election.

Permit me to say once more that, before deciding on my constitutional course on this matter, I gave the subject the most fair-minded and painstaking consideration which it was in my power to apply.

I can only add how sincerely I regret the severance of our official companionship, and how gratefully I acknowledge the help of your counsel and co-operation.

With warmest wishes,

Yours sincerely,

(Sgd.) BYNG OF VIMY.

The Right Hon. W. L. Mackenzie King, C.M.G., &c., &c., Ottawa.

Ottawa, July 3, 1926.

His Excellency, General

The Right Honourable The Lord Byng of Vimy, G.C.B., G.C.M.G.,
&c., Governor-General of the Dominion of Canada,
Ottawa.

My dear Lord Byng,

I duly received Your Excellency's letter of June 29, for which I desire to thank Your Excellency.

Paragraph three of Your Excellency's letter reads as follows:

You advise me 'that as, in your opinion, Mr. Meighen is unable to govern the country, there should be another election with the present machinery to enable the people to decide'.

Also:

My contention is that Mr. Meighen has not been given a chance of trying to govern, or saying that he cannot do so, and that all reasonable expedients should be tried before resorting to another election.

To the accuracy of the statement of Your Excellency's contention as set forth in this paragraph, I have no exception to take. Inasmuch, however, as what purports to have been my advice to Your Excellency appears in Your Excellency's letter within quotation marks, and might therefore be assumed to be words of mine as expressed in conversation with Your Excellency in tendering advice, may I respectfully say that the words 'with the present machinery'—apart from the entire sentence appearing as a quotation—are quite misleading, as no such words were used or referred to by me in any advice tendered. Fortunately, the text of the quotation clearly indicates that, taken as a whole, the words as quoted could not have been words coming from me.

I advised Your Excellency that, in my opinion, the existing situation in the House of Commons demanded a dissolution of Parliament, and that there should be another election to enable the people to decide upon a new House of Commons.

In reply to Your Excellency's contention that Mr. Meighen had not been given a chance of trying to govern, or saying that he could not do so, I said that I could not advise Your Excellency to send for Mr. Meighen or for any other member of the present House of Commons to form an administration, as I did not believe any other administration could be formed which would command the confidence of the House. As to Mr. Meighen not having been given a chance of trying to govern, I pointed out that at the commencement of the session it had been left to the people's representatives in Parliament to decide as to who was to advise Your Excellency, and that Mr. Meighen's chances to obtain the support of the Commons had been quite as good as my own; that the House of Commons having declined to express any confidence in Mr. Meighen throughout the entire session, I could not see wherein there was any probability of the House giving him the support which would enable him to carry on the Government, and that therefore I could not assume the responsibility of advising Your Excellency to send for him. As there was still less probability of any other honourable member of the House being able to command its confidence, dissolution, to be followed by a general election, in which the people would be given an opportunity to decide, appeared to me the only course which I could advise, and I advised accordingly.

As no formal record of the conversations between us was kept, I have felt, in view of the representations of paragraph three of Your Excellency's letter, which will become a matter of official record, I should also record on paper my own statement of the advice tendered Your Excellency both as regards dissolution and Your Excellency's contention in reference thereto.

With respect to the concluding paragraph of Your Excellency's letter, may I say that I am sure that the regret felt by Your Excellency at the severance of our official companionship was not any greater than my own, and that I acknowledge with not less gratitude the help of Your Excellency's counsel and co-operation throughout the period during which I had the privilege of enjoying Your Excellency's confidence.

I am, Your Excellency,
Yours very sincerely,
(Sgd.) W. L. MACKENZIE KING.

Government House,
Ottawa, July 5, 1926.

Dear Mr. King,

Many thanks for your letter of July 3. The letter in question was written entirely from the wish on my part to express my sincere gratitude for the help and co-operation you have given me during your tenure of the Premiership. The quotations in it are by no means

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intended to recall words used at our meetings, and in that connexion I would ask you to read the preceding paragraph.

I was stating my impression as to the one point at issue, and endeavouring to put it in a condensed form.

Of course I readily add your letter to the documentary record of the situation.

Yours sincerely,
(Sgd.) BYNG OF VIMY.

The Right Hon. W. L. Mackenzie King, C.M.G., &c., &c., Ottawa.

2. ANNOUNCEMENT OF THE RESIGNATION TO THE HOUSE OF
COMMONS

(Canadian House of Commons Debates, June 28, 1926, pp. 5096-7.)

Monday, June 28, 1926.

The House met at two o'clock. . . .

Right Hon. W. L. MACKENZIE KING: Mr. Speaker, I have a very important announcement which I wish to make to the House before proceeding any further. The public interest demands a dissolution of this House of Commons. As Prime Minister I so advised His Excellency the Governor-General shortly after noon to-day. His Excellency having declined to accept my advice to grant a dissolution, to which I believe under British practice I was entitled, I immediately tendered my resignation which His Excellency has been graciously pleased to accept. In the circumstances, as one of the members of the House of Commons, I would move that the House do now adjourn.

Right Hon. ARTHUR MEIGHEN: Mr. Speaker, if I caught the Prime Minister's words aright, they were that the House adjourn; that the Government has resigned. I wish to add only this that I am—

Mr. MACKENZIE KING: I might say that this motion is not debatable.

Mr. MEIGHEN: I do not propose to debate it, but I presume the Prime Minister will agree that I have a right to make a statement. As the House knows, we are close to the end of the session and the question of how the session should be finished is one of great importance to the country. I think there should be a conference between myself and the Prime Minister.

. . . Mr. MACKENZIE KING: May I make my position clear? At the present time there is no Government. I am not Prime Minister; I cannot speak as Prime Minister. I can speak only as one member of this House, and it is as a humble member of this House that I submit that inasmuch as His Excellency is without an adviser, I do not think it would be proper for the House to proceed to discuss anything. If the House is to continue its proceedings, some one must assume, as His Excellency's adviser, the responsibility for His Excellency's refusal to grant a dissolution in the existing circumstances; and until His Excellency has an adviser who will assume this responsibility, I

submit that this House should not proceed to discuss any matters whatever.

Mr. SPEAKER: The right hon. gentleman is technically right. The motion to adjourn is not debatable. The right hon. gentleman (Mr. Meighen) stated that he did not intend to debate that motion but he wanted to make a statement. Under the circumstances, according to Bourinot, he should be allowed to make a statement.

Mr. MEIGHEN: The only statement I wish to make is this. I think on the question of the completion of the session there should be a conference between the Prime Minister and myself, in which conference I am prepared to engage.

Mr. MACKENZIE KING: There is no Prime Minister—may I emphasize that? When there is a Prime Minister he may come to this House and announce his policy and his wishes.

Mr. MEIGHEN: Until when is the House to adjourn?

Mr. MACKENZIE KING: I assume until to-morrow.

Motion agreed to and the House adjourned at 2.15 p.m.

B. FORMATION OF THE MEIGHEN GOVERNMENT

I. STATEMENT TO THE HOUSE OF COMMONS

(*Canadian House of Commons Debates*, June 29, 1926, pp. 5097-8.)

Tuesday, June 29, 1926.

The House met at two o'clock.

Sir HENRY DRAYTON (Leader of the House): Before the proceedings open I desire to give to the House a statement prepared by the right hon. the Prime Minister (Mr. Meighen) in connexion with changes in the ministerial situation. The statement is as follows:

Immediately following the resignation of the late Government and the adjournment of the House yesterday, His Excellency the Governor-General sent for the Right Honourable Arthur Meighen, leader of the Conservative party, and requested him to form a new administration. Mr. Meighen advised His Excellency last evening that he would undertake this task, and was sworn in this morning as Prime Minister, Secretary of State for External Affairs, and President of the Privy Council.

Having in mind the fact that the present session has now continued for almost six months, and is very near its close, Mr. Meighen believed it to be the first duty of any Government he might form to conclude with all convenient dispatch the work of the present session. Such a course in preference to a somewhat prolonged adjournment was demanded also by a just regard for the convenience of hon. members, especially those who come from a great distance.

It was manifestly impossible to effect this result if a Government was to be formed in the usual way and if Ministers were to be assigned portfolios necessitating the vacating of their seats and consequent by-elections. The delay thus involved would, especially at this period of the year, have entailed unnecessary hardship. The Prime Minister accordingly

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decided to constitute and submit to His Excellency a temporary Ministry composed of seven members, who would be sworn in without portfolio, and who would assume responsibility as acting Ministers of the several departments.

. . . Mr. Meighen having accepted an office of emolument under the Crown, namely that of Prime Minister, has thereby vacated his seat, and has asked me to assume temporarily the duty of leading the Government in the House. As already stated, the Government deems it its first duty to give Parliament an opportunity of dealing with all such matters as should be disposed of prior to the close of the session. Among these is the resolution of the honourable member for St. Henri, for adoption of the report of the special committee which investigated the Department of Customs and Excise, and the amendment thereto of Mr. Stevens, as amended by the amendment submitted by Mr. Fansher. The Government feels that under all the circumstances it has no other course than to ask the House to take up and dispose of this subject in the same way as others which appear on the order paper. While in opposition the present Prime Minister announced to Parliament the acceptance by his party of the amendment moved by the Honourable Mr. Stevens, as amended by the amendment of Mr. Fansher. This position the same party takes now when in office and the adoption of such amendment so amended represents the view of the Government and the advice of the Government to the House. So soon as prorogation takes effect Mr. Meighen will immediately address himself to the task of constituting a Government in the method established by custom. The present plan is merely to meet an unusual if not unprecedented situation.

2. CRITICISM OF THE ACTING MINISTRY

(*Canadian House of Commons Debates*, June 30, 1926, pp. 5211-16, 5224-5.)

Mr. MACKENZIE KING: We are now voting large sums of public money to different hon. gentlemen opposite who are supposed to be administering several departments of the Government. Before we proceed any further I would like to discover from those hon. gentlemen to what extent they have complied with constitutional practice in the matter of assuming office. I would like to ask my hon. friend who is leading the House whether he has taken any oath of office of any kind since he undertook to lead the House, or even before doing so.

Sir HENRY DRAYTON: Each of the different formalities prescribed in the office of the Privy Council has been observed; I am quite frank in saying that I do not know how many there are.

Mr. MACKENZIE KING: I want this information before we vote public money to hon. gentlemen who, in our opinion, are not entitled to spend one five-cent piece of the public money. I ask my hon. friend who is now leading the House whether he has taken any oath of office this year.

Sir HENRY DRAYTON: No.

Mr. MACKENZIE KING: Will my hon. friend tell me what departments he is administering?

Sir HENRY DRAYTON: I think this is somewhat irregular, Mr. Chairman, but I am quite willing to give my hon. friend the information.

Mr. MACKENZIE KING: We are discussing supply at present. If my hon. friend hesitates to give an answer to any of the questions I am asking I will see to it that we do not proceed with supply. Supply, as my hon. friend knows, is the stage at which the people's representatives in Parliament have a right to question the administration as to their right to administer public funds.

Sir HENRY DRAYTON: Absolutely; I am not making the slightest objection to it; I am not even throwing the slightest doubt upon the honesty and accuracy of the previous administration who prepared these very estimates. So far as this is concerned I have taken all the oaths which go with the administration and with the standing one has as a member of the King's Privy Council. In addition to that I have been regularly appointed by order in council as a member of the King's Privy Council to act in the present occasion in the Department of Finance and the Department of Railways and Canals. . . .

Mr. MACKENZIE KING: My hon. friend has told me that he has taken no oath this year. May I ask the hon. member for Argenteuil (Sir George Perley) what department he is administering?

Sir GEORGE PERLEY: I am Acting Secretary of State and Acting Minister of Public Works.

Mr. MACKENZIE KING: May I ask my hon. friend if he has taken any oath of office this year?

Sir GEORGE PERLEY: No. I took my oath as a Privy Councillor a great many years ago.

Mr. MACKENZIE KING: Those of us sitting on this side who composed the former Government have taken the oath as Privy Councillors, but that does not entitle us to administer departments of the Government at present. I want to make the position quite clear to hon. gentlemen opposite. I observe Ministers in this Government are former Privy Councillors, men who have taken the oath as Councillors, men who have taken the oath as Privy Councillors many years ago.

Sir GEORGE PERLEY: Except the hon. member for Halifax (Mr. Black).

Mr. MACKENZIE KING: I will have a special word in regard to him a little later. All the other acting Ministers have taken the oath as Privy Councillors at some previous time, but that gives them no right whatever to sit in this House as Ministers. What I am concerned about now is the oath taken when one becomes a Minister of the Crown.

Mr. GUTHRIE: That is not the oath we have taken; none of us are Ministers of departments, but merely acting Ministers.

Mr. MACKENZIE KING: I wish to ask the hon. member for Fort William (Mr. Manion) what departments he is administering.

Mr. MANION: I have the Departments of Soldiers' Civil Establishment, Immigration, Labour, Health, and Postmaster-General. . . .

Mr. MACKENZIE KING: I might as well come to the point that I have very much in mind at the moment. My hon. friend the leader of the House says that everything was done in a constitutional and proper manner. It is not a secret in any way of the Privy Council that an order in council to be regular, to have any force, must be carried by a quorum of the Cabinet, and that at least four are necessary to form a quorum. I can understand how the right hon. the Prime Minister may have taken his oaths and been sworn in as a Minister, but he was then, as I would understand it, the sole member of council entitled to act in an executive capacity. What I would like my hon. friend to tell the House, if he will, is how, when the right hon. gentleman assumed the position of Prime Minister and undertook to form a Ministry, he complied with the constitutional rule which requires a quorum of four to enable any order in council to be passed to appoint any Minister or to do any public business.

Sir HENRY DRAYTON: Mr. Chairman, I am quite sincere when I tell the committee that I did not count how many were present, but my recollection is, and I think it is correct, that there were six members of the Privy Council present. There has to be a start made, and the start was made.

Mr. MACKENZIE KING: Privy Councillors are not permitted to walk into the council chamber, sit around the table, and pass whatever orders they may like, to give each other official positions. If that were the case there is no reason why my erstwhile colleagues and myself should not have walked into the council chamber and sat down at the table with whoever was prepared to assume the position of Prime Minister of this country and assign positions to ourselves that would enable us to control the expenditure of public moneys to the extent necessary to carry on the administration of public affairs for a year.

Mr. CAHAN: Would it not all depend on whether my right hon. friend and those who sit about him were invited to do so by a Privy Councillor who had been called upon by His Excellency the Governor-General to form an administration?

Mr. MACKENZIE KING: No, I am afraid it does not. I think my hon. friend will find that there are two oaths which every one takes who is called upon to perform the duties of a Minister of the Crown. One oath taken is that of Privy Councillor, which a number of us in this chamber this evening have taken. But the fact that we are members of His Majesty's Privy Council gives us no right whatever to be Ministers of the Crown or to be acting as Ministers of the Crown. There are gentlemen in the other House who have taken the

oath as Privy Councillors and are Privy Councillors, but they have no right by virtue of that oath to be Ministers or acting Ministers. It was never contemplated that the Government of the country should be carried on by gentlemen who had not taken the oath of office with respect to the administration of the departments with which they were concerned. It was never contemplated that one single individual could take an oath as Prime Minister and president of the Privy Council, and any other portfolio he wished, and by virtue of that one solitary oath be able to place in office immediately a number of his fellow members of the House of Commons, members of his own political party, and thus carry on the Government of the country.

Mr. CAHAN: Has not the Prime Minister from time immemorial been entitled to call upon other members of the Privy Council to administer temporarily the affairs of a particular department without such member taking an oath with respect to that department?

Mr. MACKENZIE KING: After a Government has been formed and Ministers of the Crown have taken the oath to administer the departments to which they are assigned, certainly an acting Minister may be appointed to act in the place of a Minister already entrusted with a portfolio and properly sworn in. But what I want to make clear to the House and to the country this evening is that of this entire Cabinet there is not a single member who has taken any oath to administer a single department of the Government; and yet these gentlemen come before us with estimates and ask us to vote hundreds of millions of dollars. We have voted some thousands of dollars already just to see how calmly they would take the process, and how rapidly they are prepared to vote millions of dollars to themselves without having any authority whatever to ask this House for a single dollar. I say there is not a single Minister of this administration sitting in his seat to-night who is entitled to ask this House to vote him a single dollar.

. . . My hon. friend has referred to the annals of parliamentary history. I venture to say that he can search the pages of history in all ages of the world and he will find no single instance where a Government was ever formed in the manner in which this Government has been formed. Furthermore, he will not find a single instance where the expenditure of the entire supplies of the country were handed over to a group of gentlemen with no responsibility whatever. If my hon. friends opposite have an idea that we propose, as members of this House, to allow the House to prorogue under these circumstances without a pretty full explanation they are very much mistaken.

. . . I believe that His Excellency the Governor-General sincerely believed that the present Prime Minister would be able to carry on the Government of this country in a manner befitting and in accordance with British traditions, in a manner which would accord with the recognized principles of responsible government; and believing that,

His Excellency undoubtedly asked the present Prime Minister whether he was prepared to assume office on those conditions. Now if the right hon. gentleman can demonstrate to the country, if he has demonstrated to this House and this Parliament, that he is able to do that, after what we have seen and are witnessing in this so-called Ministry presented to us to-night, then I say that His Excellency's judgement in the matter has been sound and right, and there is no criticism to offer. But I do say this, that if—and this is subject to something further I shall have to say—if by any chance it should appear that we have another day of the character we have had to-day, when the Government can only be carried on by Ministers not one of whom has taken an oath of office, then I think it would be time for His Excellency to ask himself the question whether the right hon. gentleman who assumed to carry on this House has carried out his undertaking. If he has not carried it out, then, as I have already said, it is the duty of the present Prime Minister not to wait until His Excellency is obliged to send for him but to return to His Excellency the Governor-General and relieve His Excellency of the tremendous responsibility which he is carrying at this hour.

3. DEFENCE OF THE ACTING MINISTRY

(*Canadian House of Commons Debates*, July 1, 1926, pp. 5242-4.)

Mr. GUTHRIE: This is the situation. There is in Canada a Privy Council, the King's Privy Council for Canada, and that Privy Council is constituted under section 10 of our constitutional Act known as the British North America Act. Section 10 of that Act provides:

There shall be a council to aid and advise in the government of Canada, to be styled the Queen's Privy Council for Canada; and the persons who are to be members of that council shall be from time to time chosen and summoned by the Governor-General and sworn in as Privy Councillors, and members thereof may be from time to time removed by the Governor-General.

That is the only council provided for in the British North America Act which is the constitutional authority over this body. It is the King's Privy Council for Canada. There is a very much involved but a very beautiful and ancient oath administered to every member who is summoned and sworn of the Privy Council. Bear in mind that there is a Privy Council and in our statutory charter nothing whatever is said about a Cabinet. There is no statutory authority for such a thing as a Cabinet, but there is statutory authority for a Privy Council. It so happens that in this case I and my hon. friends, with the exception of the hon. member for Halifax (Mr. Black), were all members of the Privy Council, not of recent creation, but of some years ago. We had, therefore, the privilege of being summoned.

And in addition the hon. member for Halifax was summoned and

was sworn of the Privy Council before any other proceedings were taken. He subscribed the roll, took the oath, and became one of the King's Privy Councillors for Canada. We were there as of right, members of the King's Privy Council attending the King's Privy Council, summoned by His Excellency upon the advice of the Prime Minister who had been accepted as the chief adviser of the Crown at that time. There we sat in council; there we passed four orders in council, or it may be five. I do not know the number.

Mr. MACKENZIE KING: My hon. friend has read the statute with regard to the Privy Council enabling Privy Councillors to aid and advise the Governor-General. We all admit that Privy Councillors may aid and advise the Governor-General, but have Privy Councillors the power to perform any executive act where they are not sworn in as Ministers?

Mr. GUTHRIE: The term 'aid and advise', under the wide interpretation given to it, includes almost everything because everything that is done by a Minister in his public capacity is assumed to be in aid of the Crown or in aid of some of the rights or interests of the Crown. I grant that there has grown up, under the system in Great Britain and under the system in Canada, a committee of the Privy Council, which we know as the Cabinet. It has no definite starting-point, having been a matter of slow growth and of gradual constitutional development. There is not a single statutory enactment, either in Great Britain or in Canada, with reference to the Cabinet. It is not recognized in our legislation, but it exists nevertheless as a committee of the Privy Council.

Now there was no Cabinet; there was no inner body at the time we met on Tuesday last. The Cabinet had ceased to exist merely by the resignation of the Prime Minister, because the resignation of the Prime Minister carries with it the resignation of the Ministry as a whole. The moment the Prime Minister resigns the Government disappears. There was no Cabinet at the time and therefore it was open to His Excellency, if he so desired—and the course he adopted was taken on the advice of his new Prime Minister—to summon his Privy Council for Canada 'to aid and advise', according to the language of the Act, or not to, as he saw fit. Those who were notified and summoned for that Privy Council meeting were all members of the Privy Council and of the House and were that day appointed acting Ministers. What transpired at that meeting of council I am not at liberty to state. As the House knows, Privy Councillors are bound by oath not to make known anything that transpired at a meeting of council, touching either what is said or what is done. But under ordinary circumstances the results of the meeting may be disclosed, and the result of this meeting was the orders in council which have already been submitted to the House and under which we claim to have been duly and properly appointed acting Ministers,

without portfolio—bear that in mind—with salary and without emolument in any form.

. . . We have been appointed regularly and constitutionally in accordance with custom observed from time immemorial, one might say, but at all events custom which has existed in this country for thirty-five years. We have followed the forms and practices of our predecessors. The moment we undertake to become Ministers of departments or, as is sometimes said, full-fledged Ministers, then in keeping with the established custom we shall be obliged to take the oath which I have read. Until that time, however, we are required to take only one single oath, the oath of a Privy Councillor of Canada. . . .

Mr. WOODSWORTH: Does the hon. member say that there is nothing in the Constitution to prevent Privy Councillors, called to undertake executive work, continuing indefinitely in such office?

Mr. GUTHRIE: There are three safeguards: first, an adverse vote in the House; secondly, the will of the Prime Minister, who may ask for their resignation; and, in the third place, the right of the Crown to dismiss Ministers.

Mr. LAPOINTE: What about the people of Canada?

Mr. GUTHRIE: And ultimate appeal to the people. Now, I have tried to state the case as clearly as possible without indulging in such overstatements as those with which the House was entertained last night, and I think that any reasonable person will conclude that in everything we have done we have complied with statutory authority, with custom, and with the usages of government in this country. We stand here to-day fully accredited as acting Ministers in the various departments to which we have been assigned.

I took occasion this morning to ask the Deputy Minister of Justice for an opinion regarding the right of members of the Privy Council to pass the orders in council which have been submitted, and the following is the reply I received as I entered the House:

. . . I understand that the Prime Minister and all the members of the present acting Ministry have been at one time or another chosen and summoned by the Governor-General and sworn in as Privy Councillors and have never ceased to be members of the Privy Council. In these circumstances I am of opinion that upon their being summoned to attend meetings of the Privy Council, no oath, other than that already taken, is required of them.

With regard to the question whether a meeting of members of the Privy Council, summoned upon the advice of the Prime Minister, has power to appoint acting ministers of departments, I am of opinion that this question should be answered in the affirmative. It is a well-known principle of constitutional government in Canada that the Governor-General may act upon the advice or with the advice and consent of or in conjunction with the Privy Council of Canada or any members thereof. I know of no provision which creates any limitation upon the exercise of this power in

connexion with the appointment of acting Ministers, and I am of opinion that the orders in council in question appointing acting ministers of departments were validly passed and are as effective as if made upon the recommendation of any committee of council.

This is signed by W. Stuart Edwards, Deputy Minister of Justice.

(*Note*: Later in the day the Meighen Government was defeated and censured by a vote of the House. Parliament was adjourned, and never met again; for it was summarily dissolved without the usual attendance of the Governor-General in person to announce the termination of the session. Members of Parliament learnt of the dissolution in the corridors from messengers and clerks, and Mr. Bourassa alleged that he first received the news from 'a wandering Asiatic consul'.)

G. DEFEAT OF THE MEIGHEN GOVERNMENT AND THE ATTITUDE OF THE PROGRESSIVE PARTY

I. ALLEGED ASSURANCE OF PROGRESSIVE SUPPORT GIVEN TO CONSERVATIVES

(*Montreal Gazette*, July 3, 1926.)

When His Excellency sent for Mr. Meighen last Monday, he asked the Conservative leader if he could command a majority in the House to get the work of the session concluded in orderly manner. Mr. Meighen replied that he could, having received informal promises from a number of the Progressives to the effect that they would vote with the Conservatives to get these all-important Bills through, pass supply, and prorogue.

His Excellency, to make sure, summoned Mr. Forke. The Progressive leader consulted with his group in caucus and took with him to Government House an agreement in three clauses, to see the new Government through the remaining work of the session. On this assurance, Lord Byng invited Mr. Meighen to take control without a dissolution and save the work of the session.

The memorandum was as follows:

'Memo. for Mr. Forke from Progressive group before he visited the Governor-General.

'Tuesday, 29th June, 1926.

'Motion agreed to by Progressive group:

'That we assist the new administration in completing the business of the session.

'That we are in agreement of the necessity of continuing the investigation into the customs and excise department by a judicial commission.

'We believe it advisable that no dissolution should take place until the judicial commission has finished its investigation into the Customs and Excise Department, and that Parliament be summoned to deal with the report.'

On Tuesday the Progressives gave the Government majorities of 12 and 10 on motions censuring the late Government on the customs scandal. On Wednesday they voted down the resolution of want of confidence on fiscal questions, giving the Government a majority of 7. But on Thursday, four days after assuring His Excellency they would support the Government in concluding the work of the session, Hon. James Robb moved his want of confidence vote declaring the acting ministers were not qualified to sit in the House and conduct the passing of supply, and 14 of the Progressives decided to vote for it. It was purely a legal question, and the Farmer members had the assurance of the Deputy Minister of Justice and the Clerk of the Privy Council that everything in connexion with the constitution of the temporary Government was legally in order.

The reason the Progressives voted for this meaningless resolution seems to be because of its underlying meaning, which was, as the debate made clear, censure of His Excellency the Governor-General as having exceeded his prerogative in refusing Mr. King a dissolution.

2. STATEMENT BY PROGRESSIVES

(*Montreal Gazette*, July 5, 1926.)

The following, which, according to E. J. Garland, former member for Bow River, has been authorized by a conference of the Progressive group, was made public by Mr. Garland to-night:

'On Tuesday, June 29, it was made known that Mr. Meighen had accepted an invitation to form a Government. This he did without having communicated with the Progressives or seeking their co-operation.

'A conference of the Progressive group took place the same day, during the course of which a telephone communication was received by Mr. Forke, requesting him to meet His Excellency the Governor-General. Seized with the importance of the situation the group, after discussion, undertook to give to Mr. Forke a confidential memorandum for his guidance in any conversation that might take place. It was clearly understood by all our members, first, that the memorandum was simply a guide for Mr. Forke; secondly, a general indication that we were prepared to act fairly with the new administration and facilitate the completion of the session's business, and, thirdly, was purely voluntary and in no sense could it be regarded as a contract.

'It was, of course, always based on the assumption that the new Ministry was legally constituted and capable of functioning. The memorandum was not addressed to His Excellency, nor was any other communication from the Progressive group directed to the Governor-General. Mr. Meighen had no assurance from our group, nor did he seek an assurance. No promise was broken, for no promise had been made. However, had the Conservative temporary Government been

legally and constitutionally established, the Progressives would undoubtedly have given it assistance in completing the work of the session. This fact may be proved by the following incidents:

'(1) The Progressives requested an interview with Mr. Meighen and secured it at the very time when Mr. Forke was being consulted by His Excellency. In this interview no mention whatever was made of co-operation or assistance, and it was solely for the purpose of ascertaining the procedure Mr. Meighen intended to adopt.

'(2) A majority of the Progressives rejected the purely partisan fiscal motion introduced by the Liberals.

'We assisted in dismissing the Conservative shadow Government for the following reasons:

'(1) It was not legally capable of functioning either as to the introduction of money bills or estimates or in the letting of necessary contracts.

'(2) The act of Mr. Meighen in attempting to usurp the functions of government in so illegal a manner is evident when it is known that the proper step for Mr. Meighen to have taken was to have sought adjournment for six weeks to have properly elected and sworn his Ministry.

'(3) The action of the Governor-General in refusing to accept the advice of his adviser, the late Prime Minister, was unconstitutional, and calculated to restore Canada to a purely colonial status.

'Following the declaration by Parliament that his acting Ministers violated the privileges of the House, Mr. Meighen had at least three courses open to him.

'(1) It was still possible for him to seek the necessary adjournment and properly establish his Ministry when the session's work could have been concluded.

'(2) Resign office and allow the late Ministry of Mr. King to be recalled. As less than one month had passed since the change in the House occurred, it was legally possible for the late Ministry to return and complete its work.

'(3) Mr. Meighen himself of all his alleged Ministry, legally sworn in as Prime Minister, &c., could have and should have secured the royal assent to the legislation which had passed both Houses. This would have included the Agricultural Credits Bill, the Revaluation of Soldiers' Land Bill, the Montreal Harbor Bill, the Hudson Bay Railway and much other legislation and estimates.

'That he failed to do any one of the above, but advised the summary dismissal of Parliament, without either meeting Parliament or arranging for the assent to the legislation, constitutes not only a breach of faith to the people of Canada, but a disgusting insult to the people's representatives. But, worse still, by his advice to the Crown, Mr. Meighen made His Excellency the Governor-General of Canada a party to this deliberate theft of the people's legislation. But the Crown

can do no wrong. Mr. Meighen alone stands responsible for the loss of the fruit of five years of effort by the Progressive group, and of the legislative work of the past five months of Parliament.'

D. ELECTION STATEMENTS BY THE LEADERS

(Extracts from 'The Issues as I see Them', *MacLean's Magazine*, September 1, 1926.)

(1) The Liberal Case, by Rt. Hon. W. L. Mackenzie King

... Let me come now to a consideration of British usage, British practice, and British law in their bearing upon events of the past few weeks, which events touch the very heart of our parliamentary institutions and traditions, and go to the very root of the system of responsible self-government which, under the British Crown and the British flag, we believe it to be our rightful inheritance and our great privilege to enjoy.

When I became convinced that the late Parliament could not last, that no leader could so control the business of the House as to enable government to be carried on in a manner befitting British parliamentary institutions; in other words, that the government of the country could not be conducted with the authority which should lie behind it, I so informed His Excellency the Governor-General, and advised an early dissolution to which, in accord with British practice, I believed I was entitled. I was not seeking to be continued in office, I was not asking His Excellency to declare that the Government of which I had the honour to be the head had the right to govern. I was simply asking that the people who are, or who, at least, ought to be, the sovereign power in the nation, might in the necessity of the circumstances, be given an opportunity of themselves deciding by whom they desired their Government to be carried on.

The first question I should like to ask is, was I right, or was I wrong in the advice I tendered His Excellency in saying that dissolution was necessary and inevitable?

When I advised His Excellency that, in my opinion, a dissolution of Parliament was necessary, my colleagues and I enjoyed the confidence of the House of Commons. I had been Prime Minister throughout the whole of the session then near its close, and had been Prime Minister throughout the whole of the preceding Parliament. For four years and a half, in a very difficult period of our country's history, I had held that high office and never once as Prime Minister had I encountered defeat. I was in every particular entitled to advise, and, according to British practice, I was entitled, I believe, to have my advice accepted.

The second question I should like to ask is whether I was right or wrong in stating to His Excellency that if, as Prime Minister, I could not carry on in a manner befitting the honour and dignity of Parlia-

ment under conditions as they existed in the House of Commons, that neither Mr. Meighen nor any other member of the House could. If I was wrong, why did Mr. Meighen's Government not last longer than two days and a half, why did Mr. Meighen end the session in such a summary fashion, not even waiting to arrange for a formal prorogation?

I think I do full justice to His Excellency when I say that he conceived it to be his duty, in the circumstances of the late Parliament, to act as a sort of umpire between the political parties in Canada.

I took the position that Mr. Meighen's chances to secure support had been quite as good as my own, that throughout the session the House of Commons had consistently declined to give him its confidence, and I did not see how it could now be expected to give its confidence to any Ministry he might attempt to form; that as to which political party had the right to govern, that was a matter which, as I had pointed out after the last general elections, it was for Parliament to decide, if Parliament were in a position so to do; that when Parliament ceased to be in a position to make a satisfactory decision as to which party should govern, it was then for the people to decide. In neither case, I maintained, was it a duty or a responsibility of the Governor-General to make the decision. I stated that in my humble opinion it was not for the Crown or its representative to be concerned with the differences of political parties, and that the prerogative of dissolution, like other prerogatives of the Crown, had come under British practice to be exercised by the Sovereign on the advice of his Prime Minister. It was for the Crown's advisor to say whether or not dissolution was necessary and for the Crown's advisor to take the responsibility of the advice tendered. Once a dissolution was granted, the people would soon say whether in the circumstances the advice tendered was or was not in accord with their wishes. In a word, the position I took was that, in Canada, the relation of Prime Minister to Governor-General is the same in all essential respects as that of Prime Minister to the King in Great Britain.

That is the position for which I now stand and for which the Liberal party in Canada stands. . . .

Serious as is the issue which has been raised with respect to the relations of Prime Minister to Governor-General, it pales into relative insignificance when compared with the issue of the relations of Prime Minister to Parliament raised by the actions of Mr. Meighen himself. The supremacy of Parliament, the rights, the dignities, the existence of Parliament have been challenged by the present Prime Minister in a manner that surpasses all belief.

Mr. Meighen, when he accepted the office of Prime Minister, undertook, notwithstanding Parliament was in session at the time, to carry on the government of Canada by a ministry that in no sense of the word was a responsible ministry, and by his advice, knowingly,

made the Crown, through its representative, a party to this unconstitutional course of procedure.

For a period of two weeks including three days during which Parliament was in session, Mr. Meighen did not hesitate to advise His Excellency with respect to all Canada's domestic, inter-imperial, and international affairs and to administer all the departments of the Government of Canada without a single Minister sworn to office, save himself. He alone was the Government of Canada over that period of time. If that is not anarchy or absolutism in government I should like to know to what category political philosophy would assign government carried on under such conditions. Surely it will not be termed responsible self-government under the British parliamentary system.

(2) The Conservative Case, by Rt. Hon. Arthur Meighen

... I suppose some statement about the alleged constitutional issue, in which Mr. King is revelling with apparent great gusto, is expected. Well, to my mind, the Governor-General acted correctly and well within his powers, and in conformity with established constitutional usage. I cannot, therefore, see that there is any real issue at all. The hysterical platform utterances of Mackenzie King and his new ally, Mr. Bourassa—who is always in his element when he is disturbing racial and religious peace—should serve only to amuse; they are not instructive, and they certainly do not create alarm. Our parliamentary and other liberties are still safe and unharmed, notwithstanding the somewhat violent fulminations of these self-styled guardians of the Constitution. I commend to your readers the following editorial comments of the Toronto *Globe*, a leading Liberal newspaper of Canada, ever a staunch upholder of our constitutional rights and privileges:

The conditions which confronted His Excellency were without precedent. It may reasonably be assumed that in declining to grant a dissolution until it became evident that neither party leader could command the confidence of Parliament, he was actuated by an earnest desire to prevent jettisoning the whole achievement of the session to date, to save for the public much important legislation which has now died in its tracks, to secure the passing of necessary supply, and to avoid the turmoil, the expense, and the dislocation of business and industry involved in a general election. In any event, there can be no doubt that he acted, free from all political concern or bias, in what he believed to be the best interest of the country.

Is there anything to be gained, under these circumstances, by making the Governor-General an issue in a political campaign—by staging, in the halls and on the hustings all over the land, heated partisan controversies between self-appointed defenders of the Crown? There is much to be lost. This sort of thing can create only dissatisfaction and disturbance, and provide fuel for those agitators and disloyalists who are constantly plotting

national or Imperial arson. If His Excellency erred, his error was technical in character. It is ridiculous to assume that he sought in any way to establish gubernatorial autocracy, or to menace self-government. A dignified protest would have protected the principle at stake. No right was denied the people. Within four days the dissolution asked for by Mr. King was granted to Mr. Meighen. The electors themselves are to determine who shall carry on the Government of the country.

I shall close by repeating a statement I made on the platform at Ottawa, as follows:

It can be definitely stated that never within a century, never in the history of parliamentary government, as we have it to-day, has any Prime Minister ever demeaned himself to ask for dissolution while a vote of censure of his Government was under debate.

Mr. King tried to run away from the just condemnation of himself and his Government by Parliament, but he was not permitted to do so; he thereupon hatched a constitutional issue to act as a smoke screen. That is the case in a nutshell.

III

THE GOVERNOR-GENERAL TO-DAY

A. REPORT OF THE IMPERIAL CONFERENCE, 1926

(*Canadian Sessional Papers, 1926-7, No. 10, p. 15.*)

Position of Governors-General

We proceeded to consider whether it was desirable formally to place on record a definition of the position held by the Governor-General¹ as His Majesty's representative in the Dominions. That position, though now generally well recognized, undoubtedly represents a development from an earlier stage when the Governor-General was appointed solely on the advice of His Majesty's Ministers in London and acted also as their representative.

In our opinion it is an essential consequence of the equality of status existing among the members of the British Commonwealth of Nations that the Governor-General of a Dominion is the representative of the Crown, holding in all essential respects the same position in relation to the administration of public affairs in the Dominion as is held by His Majesty the King in Great Britain, and that he is not the representative or agent of His Majesty's Government in Great Britain or of any Department of that Government.

It seemed to us to follow that the practice whereby the Governor-General of a Dominion is the formal official channel of communication between His Majesty's Government in Great Britain and His

¹ The Governor of Newfoundland is in the same position as the Governor-General of a Dominion.

Governments in the Dominions might be regarded as no longer wholly in accordance with the constitutional position of the Governor-General. It was thought that the recognized official channel of communication should be, in future, between Government and Government direct. The representatives of Great Britain readily recognized that the existing procedure might be open to criticism and accepted the proposed change in principle in relation to any of the Dominions which desired it. Details were left for settlement as soon as possible after the Conference had completed its work, but it was recognized by the Committee as an essential feature of any change or development in the channels of communication, that a Governor-General should be supplied with copies of all documents of importance and in general should be kept as fully informed as is His Majesty the King in Great Britain of Cabinet business and public affairs.

*B. REPORT OF THE CONFERENCE ON THE OPERATION
OF DOMINION LEGISLATION AND MERCHANT SHIPPING
LEGISLATION, 1929*

(Report, pp. 17-20, 50.)

RESERVATION

Present Position.

26. Reservation means the withholding of assent by a Governor-General or Governor to a Bill duly passed by the competent legislature in order that His Majesty's pleasure may be taken thereon.

27. Statutory provisions dealing with reservation of Bills passed by Dominion Parliaments may be divided into (1) those which confer on the Governor-General a discretionary power of reservation, and (2) those which specifically oblige the Governor-General to reserve Bills dealing with particular subjects.

28. The discretionary power of reservation is dealt with in sections 56 and 59 of the New Zealand Constitution Act, 1852, sections 55 and 57 of the British North America Act, 1867, sections 58 and 60 of the Constitution of the Commonwealth of Australia (1900), sections 64 and 66 of the South Africa Act, 1909, and Article 41 of the Constitution of the Irish Free State.

29. Provisions requiring Bills relating to particular subjects to be reserved by the Governor-General for the signification of His Majesty's pleasure exist in the Australian, New Zealand, and South African Constitutions.... There is no provision requiring reservation in either the Canadian or Irish Free State Constitutions.

30. Provisions relating to compulsory reservation are also to be found in the Colonial Courts of Admiralty Act, 1890, and in the Merchant Shipping Act, 1894. These provisions are dealt with in another section of this Report.

31. The power of reservation had its origin in the instructions given by the Crown to the Governor of a Colony as to the exercise

by him of the power to assent to Bills passed by the colonial legislative body. It has been embodied in one form or another in the Constitutions of all the Dominions and may be regarded in their case as a statutory and not a prerogative power. Its exercise has involved the intervention of the Government of the United Kingdom at three stages—in the instructions to the Governor concerning the classes of Bills to be reserved, in the advice tendered to the Crown regarding the giving or withholding assent to Bills actually reserved, and in the forms in use for signifying the Royal pleasure upon a reserved Bill. Reservation found a place naturally enough in the older colonial system under which the Crown exercised supervision over the whole legislation and administration of a colony through Ministers in the United Kingdom. In the earlier stages of self-government supervision over legislation did not at once disappear, but it was exercised in a constantly narrowing field with the development of the principles and practice of responsible government. As regards the Dominions, it gradually came to be realized that the attainment of the purposes of reservation must be sought in other ways than through the use of powers by the Government of the United Kingdom. The present constitutional position is set forth in the statement of principles governing the relations of the United Kingdom and the Dominions contained in the Report of the Imperial Conference of 1926; and we have to apply these principles to the power of reservation and its exercise in the conditions now established.

RECOMMENDATIONS

Discretionary Reservation.

32. Applying the principles laid down in the Imperial Conference Report of 1926, it is established first that the power of discretionary reservation if exercised at all can only be exercised in accordance with the constitutional practice in the Dominion governing the exercise of the powers of the Governor-General; secondly, that His Majesty's Government in the United Kingdom will not advise His Majesty the King to give the Governor-General any instructions to reserve Bills presented to him for assent, and thirdly, as regards the signification of the King's pleasure concerning a reserved Bill, that it would not be in accordance with constitutional practice for advice to be tendered to His Majesty by His Majesty's Government in the United Kingdom against the views of the Government of the Dominion concerned.

Compulsory Reservation—Principle governing the signification of the King's pleasure.

33. In cases where there is a special provision requiring the reservation of Bills dealing with particular subjects, the position would in general fall within the scope of the doctrine that it is the right of the

Government of each Dominion to advise the Crown in all matters relating to its own affairs and that consequently it would not be in accordance with constitutional practice for advice to be tendered to His Majesty by His Majesty's Government in the United Kingdom in any matter appertaining to the affairs of a Dominion against the views of the Government of that Dominion.

34. The same principle applies to cases where alterations of a Constitution are required to be reserved.

Abolition of the Power of Reservation (Discretionary or Compulsory).

35. As regards the continued existence of the power of reservation, certain Dominions possess the power by amending their Constitutions to abolish the discretionary power and to repeal any provisions requiring reservation of Bills dealing with particular subjects, and it is, therefore, open to those Dominions to take the prescribed steps to that end if they so desire.

36. As regards Dominions that need the co-operation of the Parliament of the United Kingdom in order to amend the provisions in their Constitutions relating to reservation, we desire to place on record our opinion that it would be in accordance with constitutional practice that if so requested by the Dominion concerned the Government of the United Kingdom should ask Parliament to pass the necessary legislation.

122. Moreover, sections 735 and 736 of the Merchant Shipping Act, 1894, and sections 4 and 7 of the Colonial Courts of Admiralty Act, 1890, contain provisions for reservation which should no longer be applicable to legislation passed by a Dominion Parliament.

123. In order to make the above position clear and to remove any doubts which may exist, we recommend that a clause in the following terms should be inserted after the above-mentioned general clauses in the Act to be passed by the Parliament of the United Kingdom:

Without prejudice to the generality of the foregoing provisions of this Act—

(1) *Sections seven hundred and thirty-five and seven hundred and thirty-six of the Merchant Shipping Act, 1894, shall be construed as though reference therein to the Legislature of a British possession did not include reference to the Parliament of a Dominion.*

(2) *Section four of the Colonial Courts of Admiralty Act, 1890 (which requires certain laws to be reserved for the signification of His Majesty's pleasure or to contain a suspending clause), and so much of section seven of that Act as requires the approval of His Majesty in Council to any rules of Court for regulating the practice and procedure of a Colonial Court of Admiralty, shall cease to have effect in any Dominion as from the commencement of this Act.*

C. REPORT OF THE IMPERIAL CONFERENCE, 1930
(Summary of Proceedings, pp. 26-7.)

(g) APPOINTMENT OF GOVERNORS-GENERAL

The Report of the Inter-Imperial Relations Committee of the Imperial Conference of 1926 declared that the Governor-General of a Dominion is now the 'representative of the Crown, holding in all essential respects the same position in relation to the administration of public affairs in the Dominion as is held by His Majesty the King in Great Britain, and that he is not the representative or agent of His Majesty's Government in Great Britain or of any Department of that Government.'

The Report did not, however, contain any recommendation as to the procedure to be adopted henceforward in the appointment of a Governor-General, and the Conference felt it necessary to give some consideration to this question.

Having considered the question of the procedure to be observed in the appointment of a Governor-General of a Dominion in the light of the alteration in his position resulting from the Resolutions of the Imperial Conference of 1926, the Conference came to the conclusion that the following statements in regard thereto would seem to flow naturally from the new position of the Governor-General as representative of His Majesty only.

1. The parties interested in the appointment of a Governor-General of a Dominion are His Majesty the King, whose representative he is, and the Dominion concerned.
2. The constitutional practice that His Majesty acts on the advice of responsible Ministers applies also in this instance.
3. The Ministers who tender and are responsible for such advice are His Majesty's Ministers in the Dominion concerned.
4. The Ministers concerned tender their formal advice after informal consultation with His Majesty.
5. The channel of communication between His Majesty and the Government of any Dominion is a matter solely concerning His Majesty and such Government. His Majesty's Government in the United Kingdom have expressed their willingness to continue to act in relation to any of His Majesty's Governments in any manner in which that Government may desire.
6. The manner in which the instrument containing the Governor-General's appointment should reflect the principles set forth above is a matter in regard to which His Majesty is advised by His Ministers in the Dominion concerned.

D. THE GOVERNOR-GENERALSHIP

(By John S. Ewart in *Canadian Forum*, April 1928, pp. 598-9.)

... Previous to the (Imperial) Conference (of 1926), the Governor-General, while acting in the name of the King, was in reality the

representative of the British Government. He was appointed by that Government. He was instructed by it. He reported to it. And his duty was to supervise Canadian affairs so far as they had an imperial aspect. The Conference reversed all that. It declared:

that the Governor-General of a Dominion is the representative of the Crown, holding in all essential respects the same position in relation to the administration of public affairs in the Dominion as is held by His Majesty the King in Great Britain, and that he is not the representative or agent of His Majesty's Government in Great Britain or of any Department of that Government. It seemed to us to follow that the practice whereby the Governor-General of a Dominion is the formal official channel of communication between His Majesty's Government in Great Britain and His Governments in the Dominions might be regarded as no longer wholly in accordance with the constitutional position of the Governor-General. It was thought that the recognized official channel of communication should be, in future, between Government and Government direct.

Prior to the Conference, the Governor-General discharged, in reality, two sets of duties. He was, to some extent, what his name implies—a Governor-General; but he also acted as a diplomatic representative of the British Government. The effect of the declaration of the Conference is that he has ceased to be a British and has become a Canadian official. He no longer acts under the instructions of the British Government. He no longer sends reports to the Secretary of State for the Dominions. With that department of the British Government, or with the British Government itself, he has no connexion.

And inasmuch as he has dropped his association with the British Government—has ceased to be an official of that Government—it follows that, for the future, he will not be appointed by that Government. He will be appointed by the Government with which he is to be associated. That this is a necessary corollary of the declaration of the Conference has already been recognized in two of the Dominions. Mr. James McNeill's appointment to the office of Governor-General of the Irish Free State was made on the advice of the Irish Free State, and not in any way on the advice of the British Government. So, also, when the term of office of the Earl of Athlone as Governor-General in South Africa was expiring, it was extended by the King, 'on the advice of His Majesty's Government of the Union of South Africa', and not in any way on the advice of the British Government. When, therefore, Lord Willingdon's term of office expires, his successor will be appointed by the King 'on the advice of' the Canadian Government, and in the making of the appointment the British Government will take no part. If they should attempt to interfere, their action would properly be resented by the Canadian Government.

These considerations raise the question as to the selection of a

successor to Lord Willingdon. So long as our Governor was a British official, it was fitting that the appointee should be a resident of the British Isles—the locality from which his appointment and his instructions emanated. But when all associations between the British Government and the Governor has ceased, there can be no reason why the appointee should come to us from overseas. In earlier days, the British Government sent us most of our officials, and it would only be in accordance with historic development—with the appointment by ourselves of those who are to serve us—that our Governor, being our official, should be appointed from among our own citizens. We can appoint whom we please. By that I mean that the appointment rests with the King, but that he, without hesitation, will act upon our advice.

The change thus effected by the Imperial Conference has removed an anomalous difficulty with which we have had to deal, namely, that although we are in some respects (for instance, with reference to treaties) something of a sovereign state, we have not been afforded direct intercourse with the King. We communicated with him through the Governor-General and the Secretary of State for the Dominions. Now, however, the Governor-General does not communicate with the Secretary. He is no longer an official of the British Government. He is the representative of the King only, and our communications are with the King's representative who resides at Ottawa. Were the King here, we should communicate with him direct. Being three thousand miles away, he has appointed a gentleman who ought now to be known not as a Governor but as a Viceroy—as a person acting, in the King's absence, as the King himself would act. With that gentleman alone we hold communication. Whenever the Viceroy deems it necessary to obtain further instructions from the King, he will, in future, write direct to His Majesty and not, under any circumstances, to any member of the British Government.

Finally, the change effected by the Imperial Conference renders necessary very substantial alterations of two of the documents under which our Governors-General have heretofore acted. One of these (5 October 1878) is entitled 'Letters Patent constituting the Office of Governor-General of the Dominion of Canada, 1878'. This document, as its title indicates, constitutes the office of Governor-General and proceeds to authorize the Governor, for the time being, to discharge certain duties. The second of the documents (of the same date) is entitled 'Instructions to the Governor-General of the Dominion of Canada, 1878'. The Imperial Conference has rendered these two documents anachronistic. They do not fit into the new system. The duties of a Governor as indicated by them are not now duties, which, under the new régime, he discharges. New documents must be prepared and issued by the King. One of them will create the office of Viceroy in the Dominion of Canada, and will contain

THE GOVERNOR-GENERAL

authority for the incumbent of the office, for the time being, to exercise all powers belonging to the King in respect of the Dominion of Canada. There will be no necessity for a second document similar to that heretofore in use. There will be, of course, a document appointing some one to the office of Viceroy of the Dominion of Canada.

As above stated, the Governor-General, while acting under the instructions of the British Government, acted in a dual capacity. One of his capacities was that of Governor, and the other that of a diplomatic representative. Now both his relations with the British Government have ceased to exist. The Governor becomes a Viceroy in communication with the King, and it would be incompatible with that office that he should be a diplomatic representative of the British Government. It is, therefore, contemplated that some person should be appointed by that Government as its diplomatic representative in Canada. What his official title is to be has not yet been disclosed. But his functions will be similar to those which he would exercise were he accredited to a completely foreign Government. Mr. Larkin, our representative in London, has in effect acted as our diplomatic representative there. It has been suggested that that fact should be indicated in the change of, or the addition to, his present title of High Commissioner. Whether that takes place or not, diplomatic relations between the British and Canadian Governments are now to be placed upon the footing usual between the Governments of independent States.

*E. LETTERS PATENT, INSTRUCTIONS, AND COMMISSION OF
THE GOVERNOR-GENERAL, 1931*

(*Canadian Sessional Papers*, 1931, No. 505.)

CANADA

LETTERS PATENT passed under the Great Seal of the Realm, constituting the Office of Governor-General and Commander-in-Chief of the Dominion of Canada.

Dated 23rd March, 1931.

GEORGE THE FIFTH, by the Grace of God of Great Britain, Ireland and the British Dominions beyond the Seas King, Defender of the Faith, Emperor of India;

To all to whom these Presents shall come, Greeting:

Preamble—Recites Letters Patent of 15th June, 1905.

WHEREAS by certain Letters Patent under the Great Seal bearing date at Westminster the Fifteenth day of June, 1905, His late Majesty King Edward the Seventh did constitute, order, and declare that there should be a Governor-General in and over Our Dominion of Canada, and that the person filling the said office of Governor-General should

be from time to time appointed by Commission under the Royal Sign Manual and Signet:

And whereas it is Our Will and pleasure to revoke the said Letters Patent, and to substitute other provisions in place thereof:

Revokes Letters Patent of 15th June, 1905.

Now therefore We do by these presents revoke and determine the said recited Letters Patent, and everything therein contained, but without prejudice to anything lawfully done thereunder:

And We do declare Our Will and pleasure as follows:

Office of Governor-General and Commander-in-Chief constituted.

I. We do hereby constitute, order, and declare that there shall be a Governor-General and Commander-in-Chief in and over Our Dominion of Canada (hereinafter called Our said Dominion), and appointments to the said office shall be made by Commission under Our Sign Manual and Signet.

His Powers and Authorities.

And We do hereby authorize and command Our said Governor-General and Commander-in-Chief (hereinafter called Our said Governor-General) to do and execute, in due manner, all things that shall belong to his said office, and to the trust We have reposed in him, according to the several powers and authorities granted or appointed him by virtue of 'The British North America Act, 1867' and of these present Letters Patent and of such Commission as may be issued to him under Our Sign Manual and Signet, and according to such Instructions as may from time to time be given to him under Our Sign Manual and Signet and to such Laws as are or shall hereafter be in force in Our said Dominion.

Great Seal.

II. And We do hereby authorize and empower Our said Governor-General to keep and use the Great Seal of Our said Dominion for sealing all things whatsoever that shall pass the said Great Seal.

Appointment of Judges, Justices, &c.

III. And We do further authorize and empower Our said Governor-General to constitute and appoint, in Our Name and on Our behalf, all such Judges, Commissioners, Justices of the Peace, and other necessary Officers and Ministers of Our said Dominion as may be lawfully constituted or appointed by Us.

Suspension or Removal from Office.

IV. And We do further authorize and empower Our said Governor-General, so far as We lawfully may, upon sufficient cause to him appearing, to remove from his office, or to suspend from the exercise of same, any person exercising any office within Our said Dominion,

under or by virtue of any Commission or Warrant granted, or which may be granted by Us in Our name or under Our authority.

Summoning, Proroguing, or Dissolving the Dominion Parliament.

V. And We do further authorize and empower Our said Governor-General to exercise all powers lawfully belonging to Us in respect of the summoning, proroguing, or dissolving the Parliament of Our said Dominion.

Power to appoint Deputies.

VI. And whereas by 'The British North America Act, 1867', it is amongst other things enacted that it shall be lawful for Us, if We think fit, to authorize the Governor-General of Our Dominion of Canada to appoint any person or persons, jointly or severally, to be his Deputy or Deputies within any part or parts of Our said Dominion, and in that capacity to exercise during the pleasure of Our said Governor-General, such of the powers, authorities, and functions of Our said Governor-General as he may deem it necessary or expedient to assign to such Deputy or Deputies, subject to any limitations or directions from time to time expressed or given by Us; Now We do hereby authorize and empower Our said Governor-General, subject to such limitations and directions as aforesaid, to appoint any person or persons, jointly or severally, to be his Deputy or Deputies within any part or parts of Our said Dominion of Canada, and in that capacity to exercise, during his pleasure, such of his powers, functions, and authorities, as he may deem it necessary or expedient to assign to him or them Provided always, that the appointment of such a Deputy or Deputies shall not affect the exercise of any such power, authority or function by Our said Governor-General in person.

Succession to the Government.

VII. And We do hereby declare Our pleasure to be that, in the event of the death, incapacity, removal, or absence of Our said Governor-General out of Our said Dominion, all and every the powers and authorities herein granted to him shall, until Our further pleasure is signified therein, be vested in such person as may be appointed by Us under Our Sign Manual and Signet to be Our Lieutenant-Governor of Our said Dominion; or if there shall be no such Lieutenant-Governor in Our said Dominion, then in such person or persons as may be appointed by Us under Our Sign Manual and Signet to administer the Government of the same, and in case there shall be no person or persons within Our said Dominion so appointed by Us, then in Our Chief Justice for the time being of the Supreme Court of Our said Dominion, or, in case of the death, incapacity, removal, or absence out of Our said Dominion of Our said Chief Justice for the time being,

then in the Senior Judge for the time being of Our said Supreme Court then residing in Our said Dominion and not being under incapacity.

Provided always, that the said Senior Judge shall act in the administration of the Government only if and when Our said Chief Justice shall not be present within Our said Dominion and capable of administering the Government.

Proviso—Lieutenant-Governor, &c., to take oaths of office before administering the Government.

Provided further that no such powers or authorities shall vest in such Lieutenant-Governor, or such other person or persons, until he or they shall have taken the Oaths appointed to be taken by the Governor-General of Our said Dominion, and in the manner provided by the Instructions accompanying these Our Letters Patent.

Officers and others to obey and assist the Governor-General.

VIII. And We do hereby require and command all Our Officers and Ministers, Civil and Military, and all other the inhabitants of Our said Dominion, to be obedient, aiding and assisting unto Our said Governor-General, or, in the event of his death, incapacity, or absence, to such person or persons as may, from time to time, under the provisions of these Our Letters Patent, administer the Government of Our said Dominion.

Power reserved to His Majesty to revoke, alter, or amend the present Letters Patent.

IX. And We do hereby reserve to Ourselves, Our heirs and successors, full power and authority from time to time to revoke, alter, or amend these Our Letters Patent as to Us or them shall seem meet.

Publication of Letters Patent.

X. And We do further direct and enjoin that these Our Letters Patent shall be read and proclaimed at such place or places as Our said Governor-General shall think fit within Our said Dominion of Canada.

In Witness whereof We have caused these Our Letters to be made Patent. Witness Ourselv^e at Westminster, the Twenty-third day of March, in the Twenty-first Year of Our Reign.

By Warrant under the King's Sign Manual.

SCHUSTER.

Letters Patent constituting
the Office of Governor-General and
Commander-in-Chief of the
Dominion of Canada.

THE GOVERNOR-GENERAL

CANADA

INSTRUCTIONS passed under the Royal Sign Manual and Signet to the Governor-General and Commander-in-Chief of the Dominion of Canada.

Dated 23rd March, 1931.

GEORGE R. I.

INSTRUCTIONS to Our Governor-General and Commander-in-Chief in and over Our Dominion of Canada, or, in his absence, to Our Lieutenant-Governor or other Officer for the time being administering the Government of Our said Dominion.

Given at Our Court at Saint James's, the Twenty-third day of March, 1931, in the Twenty-first year of Our Reign.

Preamble—Recites Letters Patent constituting the Office of Governor-General and Commander-in-Chief.

WHEREAS by certain Letters Patent bearing even date herewith

We have constituted, ordered, and declared that there shall be a Governor-General and Commander-in-Chief (hereinafter called Our said Governor-General) in and over Our Dominion of Canada (hereinafter called Our said Dominion), And We have thereby authorized and commanded Our said Governor-General to do and execute in due manner all things that shall belong to his said office, and to the trust We have reposed in him, according to the several powers and authorities granted or appointed him by virtue of the said Letters Patent and of such Commission as may be issued to him under Our Sign Manual and Signet, and according to such Instructions as may from time to time be given to him under Our Sign Manual and Signet, and to such Laws as are or shall hereafter be in force in Our said Dominion: Now, therefore, We do, by these Our Instructions under Our Sign Manual and Signet, declare Our pleasure to be as follows:

Publication of Governor-General's Commission.

I. Our said Governor-General for the time being shall, with all due solemnity, cause Our Commission under Our Sign Manual and Signet, appointing Our said Governor-General for the time being, to be read and published in the presence of the Chief Justice for the time being, or other Judge of the Supreme Court of Our said Dominion, and of the members of the Privy Council in Our said Dominion.

Oaths to be taken by Governor-General, &c.

Our said Governor-General, and every other Officer appointed to administer the Government of Our said Dominion, shall take the Oath of Allegiance in the form following:

'I, do swear that I will be faithful and bear true allegiance to His Majesty King George, His heirs and successors, according to law. So help me God; and likewise he or they shall take the usual Oath

for the due execution of the Office of Our Governor-General and Commander-in-Chief in and over Our said Dominion, and for the due and impartial administration of justice; which Oaths the said Chief Justice for the time being of Our said Dominion, or, in his absence, or in the event of his being otherwise incapacitated, any Judge of the Supreme Court of Our said Dominion shall, and he is hereby required to, tender and administer unto him or them.

Oaths to be administered by the Governor-General.

II. And We do authorize and require Our said Governor-General from time to time, by himself or by any other person to be authorized by him in that behalf, to administer to all and to every person or persons, as he shall think fit, who shall hold any office or place of trust or profit in Our said Dominion, the said Oath of Allegiance, together with such other Oath or Oaths as may from time to time be prescribed by any Laws or Statutes in that behalf made and provided.

Governor-General to communicate Instructions to the Privy Council of the Dominion.

III. And We do require Our said Governor-General to communicate forthwith to the Privy Council for Our said Dominion these Our Instructions, and likewise all such others, from time to time, as he shall find convenient for Our Service to be imparted to them.

Laws sent home to have marginal abstracts. Journals and Minutes.

IV. Our said Governor-General is to take care that all Laws assented to by him in Our name, or reserved for the signification of Our pleasure thereon, shall, when transmitted by him, be fairly abstracted in the margins, and be accompanied, in such cases as may seem to him necessary, with such explanatory observations as may be required to exhibit the reasons and occasions for proposing such Laws; and he shall also transmit fair copies of the Journals and Minutes of the proceedings of the Parliament of Our said Dominion, which he is to require from the clerks, or other proper officers in that behalf, of the said Parliament.

Grant of pardons—Remission of fines. Regulation of Power of Pardon.

V. And We do further authorize and empower Our said Governor-General, as he shall see occasion, in Our Name and on Our behalf, when any crime or offence against the Laws of Our said Dominion has been committed for which the offender may be tried therein, to grant a pardon to any accomplice, in such crime or offence, who shall give such information as shall lead to the conviction of the principal offender, or of any one of such offenders if more than one; and further, to grant to any offender convicted of any such crime or offence in any Court, or before any Judge, Justice, or Magistrate, within Our said

THE GOVERNOR-GENERAL

Dominion, a pardon, either free or subject to lawful conditions, or any respite of the execution of the sentence of any such offender, for such period as to Our said Governor-General may seem fit, and to remit any fines, penalties, or forfeitures which may become due and payable to Us. And We do hereby direct and enjoin that Our said Governor-General shall not pardon or reprieve any such offender without first receiving in capital cases the advice of the Privy Council for Our said Dominion, and in other cases the advice of one, at least, of his Ministers; and in any case in which such pardon or reprieve might directly affect the interests of Our Empire, or of any country or place beyond the jurisdiction of the Government of Our said Dominion, Our said Governor-General shall, before deciding as to either pardon or reprieve, take those interests specially into his own personal consideration in conjunction with such advice as aforesaid.

Governor-General's Absence.

VI. And whereas great prejudice may happen to Our service and to the security of Our said Dominion by the absence of Our said Governor-General, he shall not, upon any pretence whatever, quit Our said Dominion without having first obtained leave from Us for so doing under Our Sign Manual and Signet, or through the Prime Minister of Our said Dominion.

Instructions to the

Governor-General and Commander-in-Chief of the
Dominion of Canada.

GOVERNOR-GENERAL'S COMMISSION

GEORGE R. I.

(L.S.)

(ARMS.)

GEORGE THE FIFTH, by the Grace of God of Great Britain, Ireland and the British Dominions beyond the Seas King, Defender of the Faith, Emperor of India:

To Our Right Trusty and Right Well-beloved Cousin and Counsellor, VERE BRABAZON, Earl of Bessborough, Knight Grand Cross of Our Most Distinguished Order of Saint Michael and Saint George, formerly Captain in Our Territorial Army,

GREETING:

We do, by this Our Commission under Our Sign Manual and Signet, appoint you, the said VERE BRABAZON, Earl of Bessborough, to be during Our pleasure, Our Governor-General and Commander-in-Chief in and over Our Dominion of Canada, with all the powers, rights, privileges and advantages to the said Office belonging or appertaining.

Appointment of the Right Honourable the Earl of Bessborough, G.C.M.G., as Governor-General and Commander-in-Chief.

II. And We do hereby authorize, empower, and command you to exercise and perform all and singular the powers and directions contained in certain Letters Patent under the Great Seal, bearing date Powers and Authorities, at Westminster the Fifteenth day of June, 1905, constituting the said Office of Governor-General and Commander-in-Chief, or in any other Letters Patent adding to, amending, or substituted for the same, according to such Orders and Instructions as Our Governor-General and Commander-in-Chief for the time being hath already received, or as you may hereafter receive from Us.

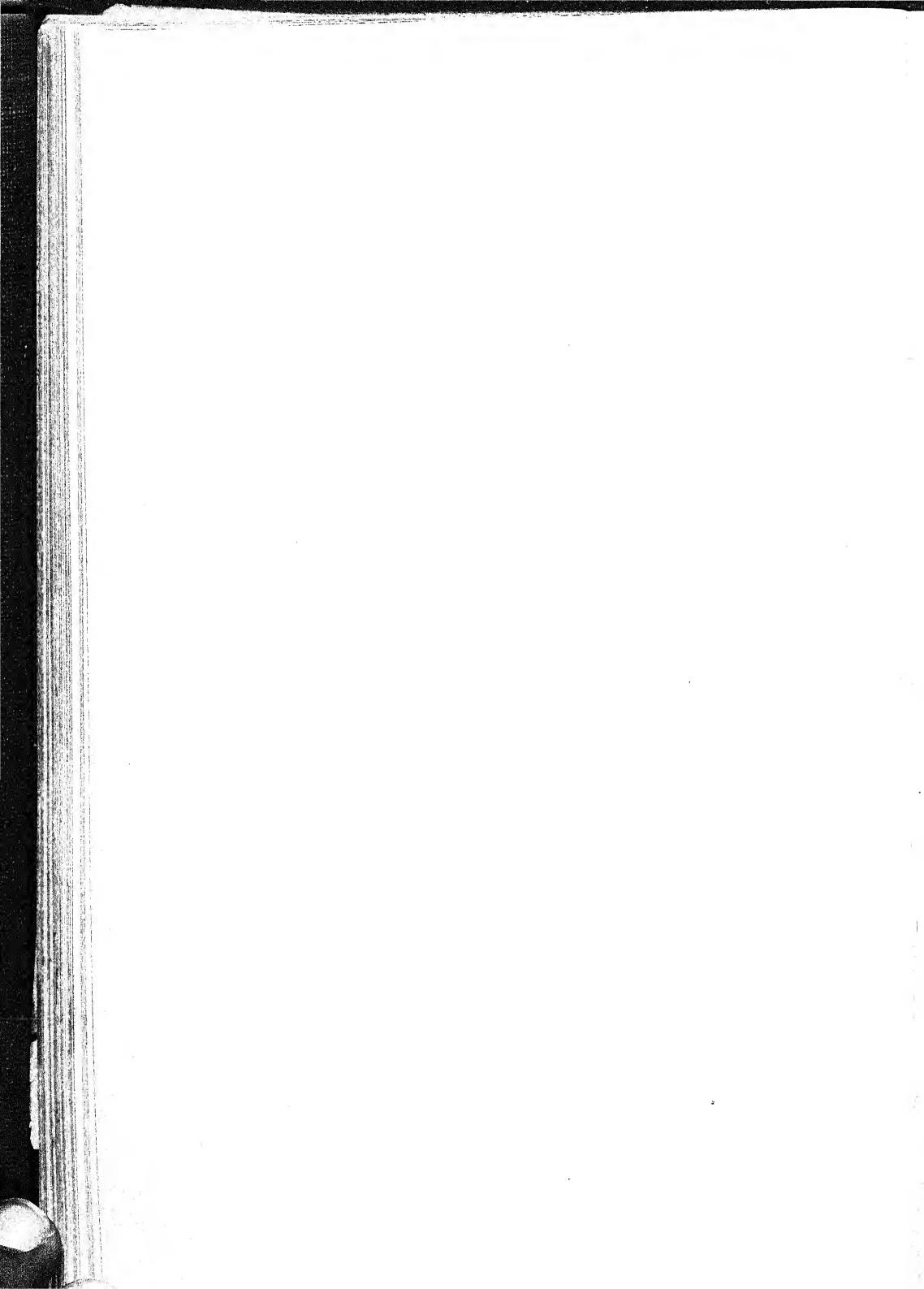
III. And further We do hereby appoint that, so soon as you shall have taken the prescribed oaths and have entered Commission dated 5th August, 1926, superseded. upon the duties of your Office, this Our present Commission shall supersede Our Commission under Our Sign Manual and Signet bearing date the Fifth day of August 1926, appointing Our Right Trusty and Well-beloved Cousin, Freeman, Viscount Willingdon (now the Earl of Willingdon), Knight Grand Commander of our Most Exalted Order of the Star of India, Knight Grand Cross of Our Most Distinguished Order of Saint Michael and Saint George, Knight Grand Commander of Our Most Eminent Order of the Indian Empire, Knight Grand Cross of Our Most Excellent Order of the British Empire, to be Our Governor-General and Commander-in-Chief in and over Our Dominion of Canada.

IV. And We do hereby command all and singular Our Officers, Officers, &c., to Ministers, and loving subjects in Our said Dominion, give obedience. and all others whom it may concern, to take due notice hereof, and to give their ready obedience accordingly.

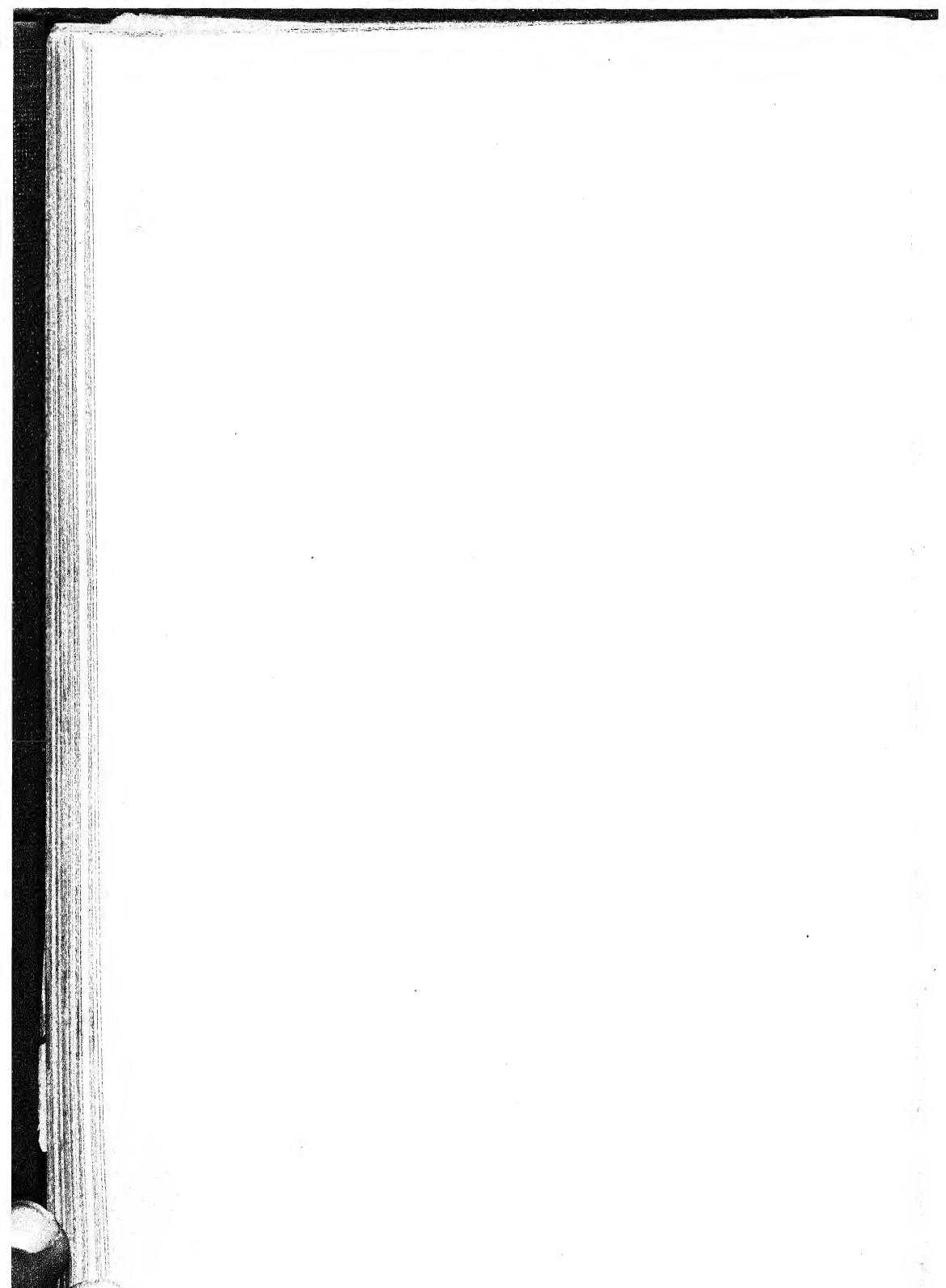
GIVEN at Our Court at Saint James's this 20th day of March, 1931, in the twenty-first year of Our Reign.

BY HIS MAJESTY'S COMMAND,

R. B. Bennett.



CHAPTER THREE
THE CABINET



THE CABINET

'Who are at it again?' Alice ventured to ask.

'Why, the Lion and the Unicorn, of course,' said the King.

'Fighting for the Crown?'

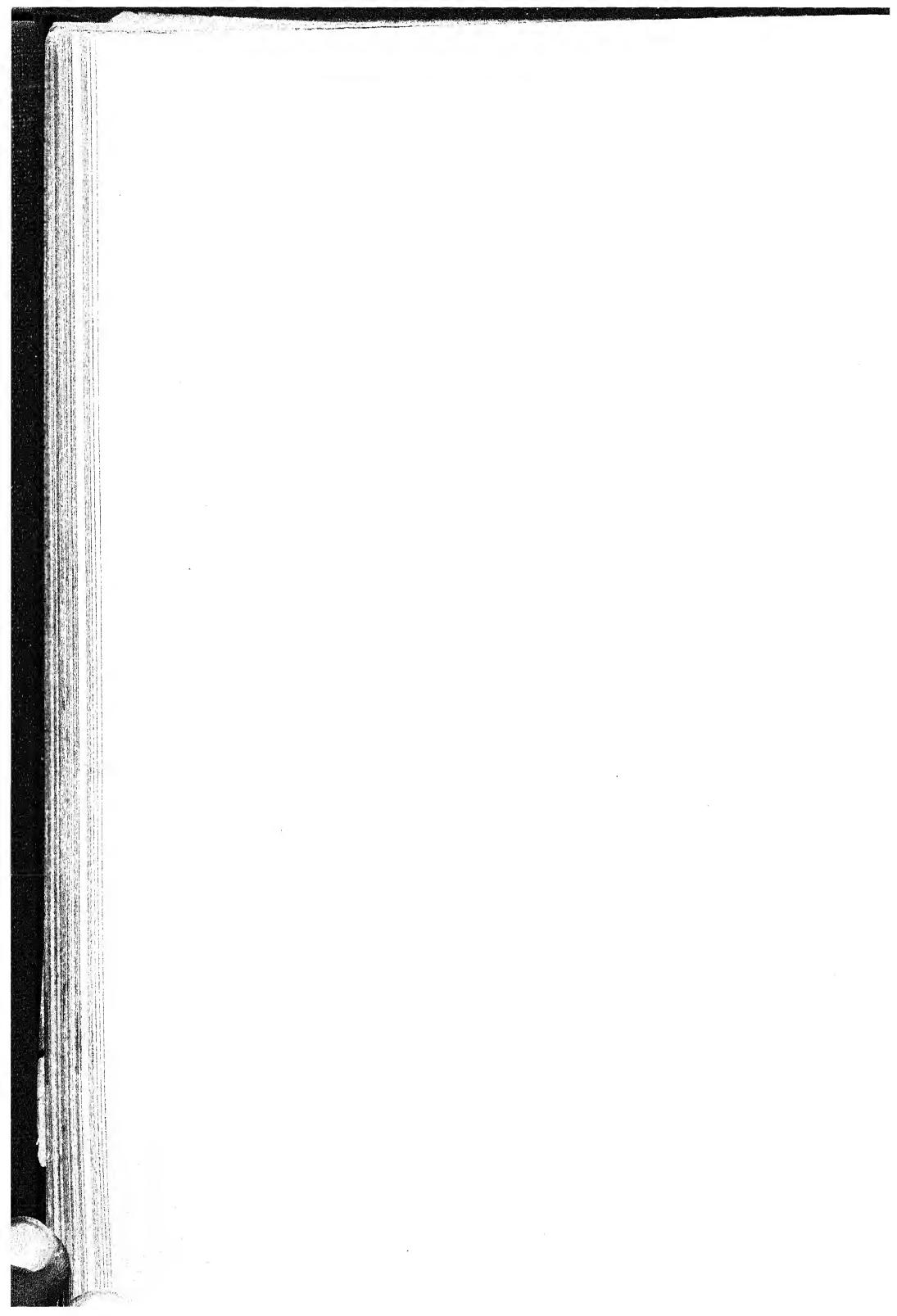
'Yes, to be sure,' said the King: 'and the best of the joke is, that it's *my* crown all the while.'

'Does—the one—that wins—get the crown?' she asked, as well as she could, for the run was putting her quite out of breath.

'Dear me, no!' said the King. 'What an idea!—*Through the Looking-Glass*.

THE British North America Act contains no mention of the Prime Minister or of the Cabinet. There are scattered references to a Privy Council, but these are so casual and infrequent that one would never suspect that a committee of this Council dominates the whole of Canadian government. This silence, however, indicates no sinister purpose on the part of the fathers of the federation; it merely furnishes another example of that decent reticence towards the really important things in government which is almost invariably observed by all those who are imbued with the true English tradition. Thus the essential facts about the Cabinet are not to be found in any law, constitutional or statutory, but must be obtained for the most part by a survey of incidents which have accumulated and solidified into customs, or of experiments which have been tried and either accepted as precedents or rejected.

The Canadian Cabinet has adopted the English ideas of secrecy, unity, and joint responsibility, while accentuating, much more than in Great Britain, the idea of giving representation to race, religion, and locality (Section I). In Canada also, as in other countries, vehement complaints have been made from time to time that the Prime Minister and the Cabinet have supplanted the House of Commons, although a wide divergence of views exists as to what the ideal relationship should be (Section II). Finally, numerous suggestions and experiments have been made regarding Cabinet organization and personnel, some of which have been retained, many of which have not even been tried (Sections III and IV).



I

CABINET CUSTOMS AND USAGES

A. THE REPRESENTATIVE CHARACTER OF THE CABINET

I. PLEA OF BRITISH COLUMBIA FOR A SEAT IN THE CABINET

(*Canadian House of Commons Debates*, July 19, 1895, pp. 4786-7, 4796.)

Mr. PRIOR: . . . There is another matter, however, I am bound to bring up before this session closes, and that is the universally expressed desire of the people of British Columbia for representation in the Dominion Cabinet. I think that after I have given some statistics, no hon. gentlemen present will think that the request made by the people of British Columbia is at all an unreasonable one. Situated as British Columbia is, geographically, lying as she does so far from the capital of the country, it is perfectly impossible for the hon. gentlemen composing the Cabinet to visit that province sufficiently often, or for a sufficiently long time to become thoroughly well acquainted with the wants and requirements of that country. There is no doubt that the troubles that have now and again occurred since confederation between the Government and that province, the friction that sometimes has occurred between the different departments and certain bodies of men in British Columbia, would never have occurred had there been sitting in the Cabinet a gentleman who was thoroughly well acquainted with the wants and the requirements of the people of that country. At the present time we see there is only one hon. member in the Cabinet representing the vast area west of Port Arthur, and although I can say and say honestly, and not only do I voice my own feelings, but the feelings of the whole of the western members, that the hon. gentleman's opinion is looked up to with the greatest confidence, and we all know that he is a most indefatigable worker, still, no man, however intellectually and physically strong, can look after such a large area, and give that careful attention to it which the people of that district have a right to expect. Not only so, but the people of British Columbia think in all fairness that every province of the Dominion should have at least one representative in the Cabinet. We have seen lately Prince Edward Island, although possessing a very little larger population than British Columbia, situated much nearer the capital than she is, a province whose interests are not nearly so diversified as those of British Columbia, one which is in close touch with New Brunswick and Nova Scotia, that have four or five representatives in the Dominion Cabinet, receive representation in the Cabinet. I am told the Premier, in his usual hopeful manner, expressed the hope that the day is not

far distant when the question of locality will have nothing to do with a member's qualifications for a portfolio. He also asserts, I am told, that the policy of the present Government is to do justice to all localities equally, but ignores the idea of the claims of any particular province whatever or locality having anything to do with a member's qualification for the appointment to the Cabinet. This is a most beautiful theory, it sounds well and breathes brotherly love in every direction, but it has not been carried out in practice. We all remember that year after year a member has been promoted to a Cabinet position, because he was a French-Canadian, or a representative Catholic, or a representative Protestant, or a representative Orangeman, or a representative Nova Scotian. All along the line that has been done, and I must say that I do not think the only qualification for gentlemen being placed in those positions has been ability. We all recognize the ability of the members of the present Cabinet, and I do not think thirteen other gentlemen of equal ability could be found in the House, but, I repeat, that Cabinet appointments are not made on the sole ground of ability. If the appointments were made more by localities and provinces than is done to-day, the country would be better governed in many ways than it is at the present time.

Mr. DAVIN: . . . I think it is not unreasonable for the member for Victoria, nor would it be unreasonable for any member from the west, to utter the thought we have heard to-day. The main interests of Canada are involved in the progress of Manitoba, the north-west, and British Columbia. And, Sir, the sentiment of provincial representation does obtain. I remember very well, shortly after the Hon. Thomas White died, a gentleman who is now a distinguished member of this House coming to me and saying: Whom do you think ought to be appointed Minister of the Interior? You know that is an Ontario portfolio. I find there is a strong sentiment in every province as to the number of members they are entitled to; and I have no doubt whatever that one of the considerations that would affect the action of the Prime Minister or the Leader of the House if they were called upon to deal with this question would be the pressure that would be brought to bear from the large as well as from the small provinces now in possession of a preponderant influence in the Cabinet. . . .

2. EXTRACT FROM ORDER-IN-COUNCIL, JUNE 14, 1904, RELIEVING
THE EARL OF DUNDONALD FROM HIS DUTIES AS GENERAL OFFICER
COMMANDING THE MILITIA

(*Canadian Sessional Papers*, 1904, No. 113, p. 2.)

In the case of members of the Cabinet, while all have an equal degree of responsibility in a constitutional sense, yet in the practical working out of responsible government in a country of such vast

extent as Canada, it is found necessary to attach a special responsibility to each Minister for the public affairs of the province or district with which he has close political connexion, and with which his colleagues may not be so well acquainted. Mr. Fisher, while sharing with his colleagues that general responsibility already referred to, represents in a particular manner the eastern townships of the province of Quebec. If, when it was proposed to form a new regiment in that district, he interested himself in the work and sought to make the organization effective, he was not merely exercising a right: he was discharging a duty both to the people of the district and to his colleagues in the Cabinet, who would expect him to inform himself of all the facts and advise them before approval by the Cabinet of the proposed arrangement.

3. CRITICISM OF SIR ROBERT BORDEN'S LAST CABINET

(*Canadian House of Commons Debates*, March 1, 1920, pp. 32-3.)

Hon. W. L. MACKENZIE KING (Leader of the Opposition): . . . Let me say a word in regard to what I think the spirit of the Constitution demands with respect to the representative character of the Cabinet. Canada is a country of wide geographical areas. Up to the time of confederation it was a country of scattered provinces and territories. The work of nation-building ever since has consisted in welding into one Dominion the various provinces and territories, and cementing between the parts, bonds of friendship, mutual understanding, and common interest. The representative character of the Cabinet has been one of the most effective means to this highly important end, so that it is essential we should have a Cabinet that will represent in a general way the various important considerations of race, religion, economic interest, and provincial right and concern. I shall not speak of more than one of these, but every Cabinet that there has been from the time of confederation up to the present has had regard for the different elements that go to make up the nation in a way that will tend to unite and cement together the different portions of the Dominion.

We have representing the province of Quebec in this House two hon. gentlemen whom I see opposite to me at the moment, the Minister of Justice (Mr. Doherty) and the Minister of Marine and Fisheries (Mr. Ballantyne). Both these hon. gentlemen are English-speaking. There is not in the Cabinet a single representative of the French-Canadians in this country.

An hon. MEMBER: What about the Postmaster-General?

Hon. Mr. KING: The Postmaster-General has removed his residence from the province of Quebec altogether, and has come to reside permanently in the province of Ontario; but more than that the

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Postmaster-General ran in two constituencies in the last election when the voice of the people was heard in the matter of representation. He ran in the constituency of Laurier-Outremont and was defeated there by a majority of 1,247. He ran in the constituency of Champlain and was defeated there by a majority of 6,623. In the face of that, can it be said that the Postmaster-General represents the French-speaking element of the province of Quebec?

But that is not the most serious feature. From the confines of the city of Montreal right through to the Atlantic Ocean there is not a single Cabinet Minister, with or without a portfolio, in the Government. The province of Nova Scotia has no representative in the Cabinet;¹ the province of New Brunswick has no representative in the Cabinet; the province of Prince Edward Island has no representative in the Cabinet. That is to say, something like 3,000,000 of the people of this country are without any representation in the Government, so far as their province is concerned. How, in the face of a situation like that, can we longer talk about representative government in this country? Why is there no representation? The answer is plain. The people have lost faith in the Government, and the Government has lost faith in the people; neither has any longer any faith in the other, and yet hon. gentlemen opposite would have us believe they are carrying on representative government in this country. No, Sir, if we wish to remedy the unrest in this country let us have a Government that is representative of all classes and of all provinces in Canada.

4. FORMATION OF THE LIBERAL CABINET, 1921

(a) Comment.

(*Montreal Gazette*, December 9, 1921.)

At least one government-owned institution will pay dividends for the next two weeks. Applicants for Cabinet positions and other preferment have reserved all available accommodation in the Chateau Laurier, and that picturesque memorial of a former railway policy is seething with excitement, expectation, and intrigue. . . . Mr. King has three dangerous problems to solve in forming his new Cabinet. They are the Protestant minority representation from Quebec, the Irish Catholic representation from Ontario, and the selection of the Labour representative.

Since 1911, James A. Robb, Huntingdon-Chateauguay, has been the representative of the Quebec minority in the Liberal party. He has given freely of his time and influence to his party, and has been a consistent supporter of Sir Wilfrid Laurier and Hon. Mr. King. . . . If Mr. King chooses both Hon. Charles Murphy and W. C. Kennedy, two Irish Catholics, Ontario will be aflame, while if he has to choose

¹ This is inaccurate: the Prime Minister, Sir Robert Borden, was from Nova Scotia.

between them there will be a conflict in the Liberal party that may wreck its harmony and stability. . . . James Murdock was Mr. King's chief platform aide in Ontario during the recent election. He was to have been Minister of Labour, but failed to win his constituency.

(b) *Statement by Hon. W. L. Mackenzie King at the Time of the Announcement of his Cabinet, December 29, 1921.*

(*Toronto Globe*, December 30, 1921.)

The text of the statement issued by the new Premier, Hon. Mackenzie King, follows:

'In the formation of the Government, I have aimed, above all else, at national unity. This end I have felt would be served, and the federal spirit of our Constitution most acceptably recognized, by according representation in the Cabinet, so far as might be possible, to all the provinces of Canada, and that with regard to the number of constituencies in each province and to groups of associated provinces.

'In those parts of Canada where Liberal thought and opinion is divided, though equally opposed to the reactionary character and policies of the late Administration, I have felt that national unity would be further promoted, and confidence and goodwill between all parts and classes augmented, were opportunity of representation in the new Liberal Administration afforded individuals enjoying the confidence of a considerable proportion of the Canadian electorate who, but for such representation, might, as the years pass, be led to experience a feeling of isolation as respects the formation and administration of our national policies.

'Accordingly I made known that, regardless of existing differences, I was prepared to consider representation in the Cabinet of all who were prepared to advocate and support Liberal principles and policies, such representation to be on a basis identical with that expected of every member of the new Administration. While it was felt by those with whom I conferred that existing conditions would not permit of representation of their followings on this understanding, I have reason to believe that the attitude assumed by myself in this particular was duly appreciated and met in like spirit.

'With respect to the new Government, certain reforms have been instituted with a view to economy in national expenditure and to efficiency in administration.

'(1) The size of the Cabinet has been reduced. At the time of the formation of the Unionist Administration, for reasons alleged to be connected with the War, the Cabinet was increased in size by Sir Robert Borden. It was made of equal size by Mr. Meighen at the time of his recent appeal to the electorate. There were in the Administration with which Mr. Meighen appealed to the country twenty-two Ministers, eighteen of whom, including the Solicitor-General, were

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holding offices under the Crown, and four of whom were Ministers without portfolio. Prior to the War the office of the President of the Privy Council was held in conjunction with that of the Prime Minister. The duties attaching to that office are not such as to render necessary or to justify its being continued as a separate portfolio. It will, therefore, be held, as formerly, in conjunction with the office of the Prime Minister. The number of Ministers without portfolio has been reduced from four to three.

(2) The allotting of portfolios to members of the Senate will not be continued as a practice. Except for very special reasons, Ministers of the Crown holding portfolios will hereafter be selected from Members of Parliament occupying seats in the House of Commons. In the Ministry, as announced, there is an apparent exception to this rule. It is, however, only apparent. Hon. Hewitt Bostock of British Columbia, who has been the leader of the Liberal Opposition in the Senate, and who has been given the portfolio of the Minister of Public Works, will, it is understood, be appointed Speaker of the Senate as soon as Parliament meets. British Columbia's representation in the Ministry will then revert to the House of Commons. Senator Bostock, it is expected, will be succeeded in the leadership of the Senate by Hon. Raoul Dandurand, who, as Minister without portfolio, will then be the only representative of the Senate in the Ministry.

'It is further understood that, at the opening of Parliament, the Hon. Rodolphe Lemieux will be selected as Speaker of the House of Commons. Mr. Lemieux was urged to become a member of the new Administration, but preferred to be relieved of again assuming office as a Minister of the Crown.

(3) The Departments of Militia, Naval Service Air Force, and possibly also Mounted Police, are to be combined in one Department of National Defence.

(4) As a means of affording to members of the House of Commons opportunity of becoming more intimately acquainted with the business of the different departments of the Government, and of qualifying for promotion to higher positions, early consideration will be given by the new Administration to the desirability of appointing, in an honorary capacity, from among members of the House of Commons Parliamentary Under-Secretaries to assist the Ministers during the Parliamentary sessions.'

(c) Comment.

(The Round Table (Macmillan, London), June, 1922, pp. 636-7.)

A small political flurry followed the invitation from the Prime Minister to Mr. Charles Stewart, till lately the Liberal Prime Minister of Alberta, to enter the Cabinet; for Mr. H. W. Wood, President of the United Farmers of Alberta, whose electoral machine

had shown its strength by defeating Mr. Stewart's provincial Ministry last July and by capturing all of the twelve Alberta seats in the Dominion House in December, announced that there was no Judas among Alberta's apostles of progress; and Mr. Stewart had to find a seat in Quebec. This raises the Quebec membership to seven in a Cabinet of nineteen, but Mr. King has been able, at least nominally, to conform to the Canadian usage whereby each province is represented in the Dominion Ministry. The practice has obvious disadvantages. Political 'availability', in the American sense, becomes more important than ability, and a parochialism of political education and outlook is sometimes the result; but in a country of area so extensive, and of interests, habits, and temperament so diverse, some representation of localities is probably necessary if a Ministry is to reflect the opinion of the whole country; and the practice is unlikely to be departed from before opinion is a good deal more homogeneous than it is at present.

B. CABINET UNITY AND JOINT RESPONSIBILITY

I. DISMISSAL OF HON. J. ISRAEL TARTE, 1902

(*Canadian House of Commons Debates*, March 18, 1903, pp. 130-4.)

The PRIME MINISTER (Right Hon. Sir Wilfrid Laurier): Mr. Speaker. In pursuance of the notice which I gave some few days ago in answer to a question from my hon. friend the Leader of the Opposition (Mr. Borden, Halifax), I shall now proceed to give to the House the ministerial explanation which the House expects from the Government as to the changes which took place some few months ago in the composition of the Cabinet. In these modern days such explanations have not the importance which they had at one time, because in these modern days, with the methods of publicity there is nothing that I could tell the House of which the House has not already been informed. In the month of September last, whilst I was in Europe on the Continent, I received several communications from Canada calling my attention to the course pursued by my hon. friend the present member for the division of St. Mary's (Montreal) (Hon. Mr. Tarte) at that time my colleague in the Cabinet and then Minister of Public Works. It was represented to me that my hon. friend was pursuing a course which was not consistent with the rules of parliamentary government inasmuch as he was advocating a policy which was at variance with the policy hitherto followed by the Government of which he was a member. I thereupon ordered that all the Canadian newspapers should be sent to me in London to await my arrival there on my way back to Canada. When I returned to London from the Continent I found these newspapers, and on the long passage I had abundant time to acquaint myself with the new situation which had been created by the action of my hon.

friend, the then Minister of Public Works, and I had to come to the conclusion that the representations which had been made to me certainly required an investigation on my part. The policy of the Government on the fiscal question was laid down for the last time during last session by my hon. friend the Minister of Finance (Hon. Mr. Fielding) in making the budget speech, and on that occasion he made use of the following language:

We do not propose to make any changes in the tariff this session. . . .

Then, my hon. friend the Minister of Finance went on to say that at that very moment it would not be advisable to make tariff changes, amongst other reasons, for this reason that we had just completed the census and that we had not yet before us the condition of the industries of the country revealed by the census. Another reason was that at that very moment we were engaged in some correspondence with some foreign countries, amongst others, Germany, with the view, if possible, of bettering the condition of our trade with them, and another reason was that we were engaged to proceed at short notice during the then coming summer to London to engage in the approaching conference, and we knew for a certainty that the tariff conditions which prevailed between the motherland and this country would be examined. These were some of the reasons why my hon. friend, speaking for the Government, did not deem it advisable to have a tariff revision and he concluded as follows:

For these reasons we postpone for the present the question of tariff revision. When the moment for revision arrives, the public of Canada may rest assured that the Government will undertake the work in the spirit of moderation and caution that has prevailed in their past actions in tariff affairs, avoiding the extremes which almost always find advocates, and having regard to what is best, not for particular industries or particular sections of the country, but for the interests of the people of the whole Dominion.

I have only to remark at this moment that in holding this language my hon. friend was speaking officially, that he was giving the result of the determined policy that for the present no tariff changes should take place and that we would stand by the policy which was then on the statute-book and that this was to be the case until the condition of the country might require us to recommend a departure from that policy. Such being the condition of things and the policy so laid down in the course of that summer, my hon. friend the then Minister of Public Works (Hon. Mr. Tarte) and the present member for St. Mary's division of the city of Montreal, entered into a campaign advocating the immediate revision of the tariff in the sense of higher duties and more stringent protection. For the purposes of the present question—for the purposes of the constitutional question which is the only question at present before the House and with which I intend to

deal—it was of no circumstance whatever whether my hon. friend advocated an increase of the tariff or a decrease of the tariff. The error, the constitutional error was the same; it mattered not whether he advocated to revise the tariff up or down. The one important thing was that being a member of the Administration, he was bound by the policy laid down by the member of the Cabinet who had authority to speak upon this subject and whose voice had been heard upon the floor of this House in no uncertain tone, and who had laid it down as plain as language could make it: That the Government would not under existing circumstances admit of any tariff changes.

I know very well, Sir, and the House need not be told by me, that the gentlemen who are assembled at the council board are not expected to be any more unanimous in their views because they sit at council, than would be expected from any other body of men. It is in human nature to differ. It is in human nature, even for the best of friends; even for men professing the same views politically to differ and to differ materially on some points. But the council sits for the purpose of reconciling these differences—the council sits for the purpose of examining the situation and, having examined it, then to come to a solution which solution then becomes a law to all those who choose to remain in the Cabinet. It would be a mere redundancy for me to affirm that the necessity for solidarity between the members of the same administration is absolute; that the moment a policy has been determined upon, then it becomes the duty of every member of that administration to support it and to support it in its entirety. It can be possible that a member of the Cabinet who assented to that policy may not be convinced that it is for the best; it may be possible that he thinks a wiser course could have been taken. But if he remains in the Cabinet, it is because he thinks that on the whole it is better that his views on that subject should give way to the views of others, and that whilst his own judgement is not in accord with the judgement of his colleagues, still it is for the best interest of the country that he should resign his judgement to theirs, and continue to occupy a position in the Cabinet.

I am also aware that in some instances—not in many instances I must say—a man speaking upon the impulse of the moment may perhaps be led to take a view which is not the view which would be entertained by his colleagues, but if that remains an isolated instance no serious harm could come of it. An appeal from the Prime Minister to the man who has so spoken is generally sufficient to promote harmony and to make him understand that whether he agrees or not he must come to the view held by the Cabinet. But when a policy has been determined upon, solemnly agreed upon, and solemnly promulgated to the House and to the people, I need not tell the House—and I think my hon. friend (Hon. Mr. Tarte) ought to be the first to agree—that under such circumstances it is not only the duty

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politically of a member of the Cabinet, but it is his duty both as a friend and as a member of the party, to stand by that policy. And, if at a later stage he thinks that the policy is wrong, that it ought to be improved, that it ought to be amended, then the battle, or the action is to be taken, not before the public, not before the constituencies, but the reform has to be advocated in the first place in the Cabinet of which he is a member.

My hon. friend (Hon. Mr. Tarte), however, did not follow these rules. My hon. friend took another course, and I think he will agree with me that the language is not too strong when I say that he started upon a campaign for the purpose of advocating a policy in favour of immediate revision of the tariff in the sense of higher duties and higher protection. At the banquet of the Manufacturers' Association in Halifax he declared for such a policy. He repeated the same theory at Gananoque, at Chatham, and at several other places. If it had been an isolated expression, not repeated, not followed by any other, I think the evil done, the course pursued might have been susceptible of being reclaimed. But as my hon. friend started upon a campaign and repeated the course which he had first adopted, and made it plain to the country that what he was aiming at was an immediate revision of the tariff in the sense I have indicated against the stated policy of the Administration of which he was a member, there was no course for me to take but the course which I thought it advisable to take as soon as I landed in Canada. And as soon as I landed in Canada I came to the conclusion that the conduct and language of my hon. friend made it imperative upon me to take action immediately in that way.

2. DISMISSAL OF HON. SIR SAM HUGHES, 1916
(*Montreal Gazette*, November 15, 1916).

Ottawa, November 9, 1916.

Dear General Hughes,

During your absence I have given very careful consideration to your letter of the 1st instant, and I must express my deep regret that you saw fit to address to me, as head of the Government, a communication of that nature. As you are to return to-morrow it is my duty at once to announce to you my conclusion.

Under conditions which at times were very trying and which gave me great concern, I have done my utmost to support you in the administration of your department. This has been very difficult by reason of your strong tendency to assume powers which you do not possess and which can only be exercised by the Governor-in-Council. My time and energies, although urgently needed for much more important duties, have been very frequently employed in removing difficulties thus unnecessarily created. You seemed actuated by a desire and even an intention to administer your department as if it

were a distinct and separate government in itself. On many occasions, but without much result, I have cautioned you against this course which has frequently led to well-founded protest from your colleagues as well as detriment to the public interest.

I do not intend to dwell upon the instances, some of which are still under consideration, in which you have acted without authority or consultation in matters more or less important. Of these the latest is the establishment of a militia sub-council in Great Britain, including the appointment of its personnel. I conveyed to you on the 31st July a clear intimation that upon so important a proposal, involving considerations of the gravest moment, the Cabinet must be consulted before action was taken. All the members of the Government have full and direct responsibility in respect of the very important matters which the proposed council would advise upon and direct. The intimation which was given to you in my telegram of 31st July should not have been necessary. As soon as it was received, you proceeded to disregard it. Some portions of your letter are expressive of the attitude which I have described and to which you evidently intend to adhere. Such an attitude is wholly inconsistent with and subversive of the principle of joint responsibility upon which constitutional government is based.

But more than that, your letter is couched in such terms that I cannot overlook or excuse it. I take strong exception not only to statements which it contains but to its general character and tone. You must surely realize that I cannot retain in the Government a colleague who has addressed to me such a communication. I regret that you have thus imposed upon me the disagreeable duty of requesting your resignation as Minister of Militia and Defence.

Faithfully yours,

(Sgd.) R. L. BORDEN.

Lieutenant-General Sir Sam Hughes, K.C.B., Ottawa.

II

CABINET LEADERSHIP AND RELATION TO PARLIAMENT

A. THE POWER OF THE PRIME MINISTER

(*Toronto News*, November 28, 1905.)

Canada is governed by two legislatures, one real, the other sham. The sham legislature is composed of the Governor-General, the Senate, and the House of Commons. The real legislature consists of a despotic ruler—the Premier; an Upper House—the Cabinet; and a Lower House—the caucus of the Government members of Parliament.

The Premier is almost the absolute ruler of the country. Our

politics have developed in such a way that his office combines the peculiar advantages of the premiership as it exists in Great Britain with many of the powers of the American boss. Mr. Balfour occupies a position of splendour and of great practical influence. But he holds office purely by virtue of the skill with which he handles the emergencies of the day. He has few means of cementing his hold upon public office and the adhesion of his followers denied to the Leader of the Opposition. His management of public affairs, his handling of the House of Commons, are subject to the frankest scrutiny and his credit rises or falls with his performances, in so far as a public which includes the mass of his own party can judge.

Contrast with that the autocratic position of a Canadian Premier after a few years of success. Recollect the manner in which Sir Wilfrid Laurier has shed his colleagues right and left—ten of them in nine years. Recall the brusque assertion of authority with which he flung his autonomy policy before the English-speaking Liberals. Controlling an enormous patronage, able to influence the fortunes of almost every legislator in his following, concentrating in his hands executive and legislative power, the Premier exercises a real authority which is greater than that of the President of the United States or any modern King. His supremacy, unlike that of a British Premier, is almost independent of his general policy and of his parliamentary performances. Sir Wilfrid Laurier managed the last session very ill—probably because it was not necessary for him to take pains to manage it well. Moreover, his followers did not seem to know that he mismanaged the session. A premiership legend springs up, just as does a royalty legend. Liberals constantly repeat that Sir Wilfrid Laurier is a consummate orator and a great parliamentarian, and assume that all his speeches are excellent and all his tactics admirable; when a cool examination, unbiased by personal interest, often would show his speeches to be far from powerful and his parliamentary line unsound. These considerations do not apply to Sir Wilfrid Laurier alone. They will apply to his successor as soon as he is in the saddle.

Our Premier is really a species of absolute monarch of the medieval type. He fights his way to his throne. He has to contend against one or more pretenders, the Leader of the Opposition being the more conspicuous of these. He occasionally profits by or suffers from a palace revolution; Sir Mackenzie Bowell and Mr. Tarte could write instructively on this aspect of the parallel. His reign often ends in a catastrophe. He must succeed and if successful can do nearly everything he wishes; still, like any other leader, he must watch popular forces and avail himself of their trend. There is this difference, that in old times every person knew that the King was the ruler and laid the responsibility upon him, whereas now an elaborate system of mystification conceals the real state of affairs and relieves the modern despot of much of his responsibility. There is this further difference,

that the medieval king after all was interested, in a rough and ready way, in his kingdom as a whole, whereas our modern Canadian despot administers half the nation and guides public affairs only as an incident.

The Cabinet is our real legislature. In it all the real debates take place, and all decisions are arrived at. The Despot—that is, the Premier—nominates the members of this legislature. It deliberates in secret, as the House of Commons did when the House of Commons really did rule Britain. It is, in short, the great council of the real ruler, and is very much where our Parliament began, except that the people have less to do with its selection, and are kept in more profound ignorance of its deliberations than was the case in early England. When the Cabinet comes to a decision, it instructs the Senate and the House of Commons to register its will, and avails itself of these time-honoured institutions to make such explanations and announcements as are deemed advisable.

The caucus of Government members forms the Lower House of our real constitution. It is emphatically a lower branch, and as long as patronage remains the power it now is will exert less rather than more influence. The caucus, indeed, is ill defined, and has not assumed a set form. There is a Senate caucus and a Commons caucus; there is the French-speaking caucus, the English-speaking caucus, the caucus of the Provinces, and so forth. It clings jealously to the principle of secrecy—again like the House of Commons of old—and it is difficult to learn the nature of the discussions. Real debating occurs in it, and speeches are made which are meant to convince and which turn votes. As a rule the Upper House, the Cabinet, succeeds in carrying its will. To change the parallel a little, it is as if the nobles of the medieval House of Lords were feudal lords of the members of the House of Commons, and the two Houses occasionally held joint sittings, at which the nobles asserted their authority over their tenants. The position of the Cabinet is strengthened by the fact that, thanks to the patronage system—always the patronage system!—many members of it have personal followings in the caucus. At present Mr. Fielding, with Sir Frederick Borden as his lieutenant, is chieftain of the Nova Scotia members. Mr. Emmerson is the lord to whom six or seven New Brunswickers owe fealty. Sir Wilfrid Laurier himself is Master of Quebec, just as the Kings of France held the feudal lordship of their private estates, in addition to their royal rank. Mr. Sifton was lord of the West, and Mr. Oliver is now trying to assert his title to that honour. There is no lord of Ontario at present, a circumstance which shows why Ontario has so little influence.

That is the real system under which Canada is governed. There are modifying influences which prevent this picture from being absolutely exact. There is, for example, the influence, rather than

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the power, of the Governor-General. This is a matter upon which the utmost reticence is maintained, but it may in general terms be said that it probably is greater than the general public suspects and that it is almost wholly beneficial. It is almost our only check upon the supremacy of the Premier, and the Governor-General after all is interested in the whole body of the people, while the Premier is interested almost exclusively in his party.

That venerable relic, the House of Commons, checks the real legislature to some extent by affording a means of extorting some publicity. It is a place where the Opposition may question the despot, and the actual Upper House. If the questions are too searching answers can be refused, but it is part of the whole convention of mystification to treat the House of Commons with great respect. Moreover, it is also the custom to communicate to the House all information on public subjects, and as a channel for information to the public, a species of sublimated newspaper, it possesses considerable usefulness.

The pretence that the House of Commons exercises real legislative powers is worn very thin. It is a body of instructed delegates, sent to its precincts on Parliament Hill to obey the Premier, and, occasionally, to take part in debates in caucus. Moreover, the House has no prospect of regaining its ancient position as the centre of authority. That is gone; authority, a very shy bird, has fled from the glaring publicity, the machine nominations, the control by patronage, which have circumscribed the freedom of action of the House. The whole Dominion is organized into two parties; each candidate in each riding is simply a cog of the machine.

At present the Senate has sunk into an almost incredible lassitude. It is simply part of the patronage which is the Premier's principal weapon, and the independence for which the fathers of confederation laboured so anxiously is a mockery. As at present, it simply wastes a huge sum of money every year, its sole return for the outlay being its services as a divorce court, and the help it gives to working the spectacular side of the Constitution. And yet, one cannot help thinking that there is more hope of the Senate than of the House of Commons. If the method of appointment was altered so as to secure responsibility to some power other than the systematized party management which now unifies our whole system, it might assert its formal powers and check the authority of Premier, Cabinet, and Government caucus, now unrestricted. We are back to the need for checks and balances, which perplexed the framers of the American Constitution. The standing evil of our system now is the absolute and concentrated control of the fortunes of the whole people by the leader of one of the two parties, into which the nation is very evenly divided. If, for example, the nomination lay with the provincial legislatures, those provinces which were controlled by the party in

Opposition in Central Affairs would send Senators in sympathy, and the Senate might actually be opposed to the Government of the day. For example, during Sir John Macdonald's reign the Ontario delegation to the Senate would have been Liberal, and with the aid of occasional Ministries in the other provinces, the Liberals might have secured a majority. The check upon the Conservatives would perhaps have been salutary.

Of course, the Government may be relied upon to oppose any such change. To put the Senate on a basis of real independence would assail it in two ways. It would lessen its patronage and would curtail its authority. Only a real and sustained outburst of public feeling will effect such a measure.

B. THE FUNCTIONS OF THE PRIME MINISTER

(P. C. 1639, July 19, 1920.)

CERTIFIED to be a true copy of a Minute of a Meeting of the Committee of the Privy Council, approved by His Excellency the Administrator on the 19th July, 1920.

The Committee of the Privy Council, on the recommendation of the Honourable Arthur Meighen, the Prime Minister, submit the following memorandum regarding certain of the functions of the Prime Minister:

1. A meeting of a Committee of the Privy Council is at the call of the Prime Minister and, in his absence, of that of the senior Privy Councillor, if the President of the Council be absent.

2. The quorum of the Council being four, no submission, for approval to the Governor-General, can be made with a less number than the quorum.

3. A Minister cannot make recommendations to Council affecting the discipline of the Department of another Minister.

4. The following recommendations are the special prerogative of the Prime Minister:

Dissolution and Convocation of Parliament.

Appointment of—

Privy Councillors

Cabinet Ministers

Lieutenant-Governors (including leave of absence to same)

Provincial Administrators

Speaker of the Senate

Chief Justices of all Courts

Senators

Sub-Committees of Council

Treasury Board

Committee of Internal Economy, House of Commons

Deputy Heads of Departments

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Librarians of Parliament

Crown Appointments in both Houses of Parliament

Governor-General's Secretary's Staff

Recommendations in any Department.

The Committee advise that this Minute be issued under the Privy Seal and that a certified copy thereof be attached, under the Great Seal of Canada, to the Commission of each Minister.

All which is respectfully submitted for Your Excellency's approval.

E. J. LEMAIRE

Clerk of the Privy Council.

C. THE GOVERNMENT'S RIGHT TO RETAIN OFFICE, 1925-6

(*Canadian House of Commons Debates*, January 8, 1926, pp. 12-25.)

(The facts relevant to this debate will be found in the introductory note to Chapter II, Section II.)

Right Hon. ARTHUR MEIGHEN (Leader of the Opposition): I hand to you, Mr. Speaker, my motion and still retain the floor. The motion reads:

In the late general election the candidates of His Excellency's then advisers, at whose instance the appeal to the country was made, were defeated in a large majority of the constituencies,

That nine Ministers of the Crown, including the Prime Minister, were rejected at the polls and have no seats in Parliament,

That the party represented in the last Parliament by His Majesty's Opposition secured in the said election by far the largest support in the popular vote, and has substantially the largest number of members of any party in the present House of Commons,

That those who now assume to be His Excellency's advisers have among them no Prime Minister with a seat in either House of Parliament, and under such circumstances are not competent to act as, or to become, the committee of Parliament, commonly known as the Government, or to address Parliament through His Excellency, and their attempted continuance in office is a violation of the principles and practice of British constitutional government.

. . . That a Government whose candidates were successful in only 101 seats out of 245 should seek to continue in office is of course without precedent in our Dominion. Were they, however, in the position that, taking part in the election in question, there was no other party which had been returned with a larger number of supporters than themselves, then undoubtedly they would have been justified in assuming that they had the same right to expect the allegiance or at least the independent support of those who ran in other capacities, such as Progressives or as Independents, as would another party which had a minority in comparison with themselves, and if they did get that support they would be justified in assuming that they would be able to carry on the administration of the country.

I make that statement subject of course to this limitation, that in the present instance the Prime Minister, before his defeat, declared that even under such circumstances he would not assume the responsibility of office inasmuch as, if he did assume it, the utmost he could expect to do would be to mark time, to draw salary and indemnity, and to enjoy the sweets of power, and that he could not serve this country in the manner in which the country must be served under such conditions as now obtain. However, leaving aside the remarks of the Prime Minister to that effect, there would have been justification for the present course of the Government, even had they come back in a minority, did there exist no stronger party elected to the House, with a right equal to theirs to present to Parliament the programme of that party and to ask for the support of all elected on other tickets, if that programme appealed to them. Never in the history of this Dominion; never in the history of the British Parliament; never in the history of any province of our Dominion or of any province or State in any other Dominion, has a Government returned from an election, held under its own auspices and at its own instance, merely representing within its fold a minor group of the House, while a larger group has been returned, and ventured to assert its right to hold office or even to appeal for confidence to Parliament.

So I ask hon. gentlemen to reflect for a moment on the position in which they find themselves. To their coming and facing Parliament there can be no legal objection. But there is a constitutional objection. The practice has been for many years to resign office before the assembling of Parliament—a practice invariable over half a century save in one instance, and that was more than a third of a century ago, where a defeated Government decided to wait for the express verdict of Parliament before resigning. That the example of more than a third of a century ago, an example which at the time was severely commented upon in the press of Great Britain, should be followed is itself no credit to this alleged administration. But they are not even in a position to rely upon this somewhat hoary precedent, for they have emerged from the election as merely a minor group of the House of Commons, with a group substantially larger, elected at the same contest, opposing them. In circumstances corresponding to these no leader of a party, no former administration, has ever ventured to wait for the assembling of the House before resigning office. But, after all, we are past that stage now. We are in the House, we are here, and we find the Government in those very circumstances asking this House to vote confidence in it and to enable it, in the words of its leader, to enjoy for four years more the sweets of office, to draw salaries and indemnities, and to mark time so far as the country is concerned.

I want to come now to the last paragraph of this amendment and to make some observations on the significance and constitutional

effect of the absence of the Prime Minister—the assumed Prime Minister—from a seat in either House, because of rejection at the polls. The office of Prime Minister is an exalted office. The powers of a Prime Minister are very great. The functions and duties of a Prime Minister in Parliament are not only important, they are supreme in their importance. The Prime Minister is not only the Leader of the House, in whichever House he may be, but he is the spokesman of the nation before the Crown or the representative of the Crown. He is the spokesman, and the only spokesman, of the nation. He is the sole *via media* between Parliament, as Parliament, and the Crown or the representative of the Crown. . . . While His Honour the Speaker may, as between the House of Commons and the Crown, be the *via media* here, as between Parliament in the collective sense and the Crown, the Prime Minister is the sole medium, except when the Houses for grave reason resort to joint address. Ever since our system of constitutional government, copied as it is from that of the Old Land, reached its maturity in Great Britain, the Prime Minister has been the sole selector of all his colleagues to constitute the Ministry of the day. From 1839 to the present hour the Prime Minister has had solely in himself, without reference to the Crown—that is to say, without the power of naming on the part of the Crown—the right to choose his colleagues and the right to present those colleagues as the executive committee of Parliament, assuming that they have seats in either House; and since that time the doctrine of the unification, of the oneness, of the Ministry has been complete. The Ministry is embodied in the Prime Minister. He personifies his Ministry in so far as Parliament is concerned, in so far as the Crown is concerned, and he speaks as between Parliament and the Crown. All this implies—and it is the result of many years of constitutional development, a development which proceeded against struggles not a few—that the Minister known as the Prime Minister, in order to enable the Government to function within the walls of Parliament, must be a member of one of the Houses of Parliament. He must be a member because Parliament has a right to demand that he come there to expound the policies of the Government, to defend those policies, and admit his submission to the control of Parliament. Otherwise though he be the King's servant, he is not the agent of Parliament. . . .

A Government cannot ordinarily function in Parliament unless the Prime Minister is a member. The House will note that I have not stated that Parliament itself cannot, for certain purposes, function. I do not contend that Parliament is powerless, even though a group of Ministers assuming to be a Government present themselves without a Prime Minister in either House. There have been cases—they are very old; they go back to the early part of the last century—when Parliament has functioned in the absence of a Prime Minister although

fortuitously, during a session, he had not a seat; but never until to-day, since the full fruition of responsible government, has a Government sought to assert the authority of government and do the work of government in Parliament while the Prime Minister was without a seat in either House. . . . Not only is this true as a matter of historic precedent and fact, but it is true as a matter of necessity, as a matter of the preservation of those rights of the people which our ancestors reached after long struggles. If a Government has a right to function in Parliament without a Prime Minister in either House, then he who stands between Parliament and the Crown cannot be questioned in this House, cannot be held to account, has not accepted responsibility to Parliament, and the old days have returned when the King could address Parliament of his own right, and not on the advice of him who above all others is responsible to Parliament and the people. . . . I contend that this House cannot, that this House certainly ought not—and I use both phrases without qualification—take into account any Speech from the Throne which comes from an alleged Government through the mouth of His Excellency when that alleged Government has not a Prime Minister in this House or in the other House answerable to Parliament.

The Prime Minister writes the Speech from the Throne. . . . The Speech from the Throne comes from him to this House through the mouth of His Excellency. We are asked to consider that Speech, asked to consider it by an assumed Government, with the Prime Minister absent from both Houses and unable to sit in either. . . .

Hon. ERNEST LAPointe (Leader of the House): The right hon. member (Mr. Meighen) has issued his challenge and I am rising to take it up. I do it the more willingly owing to the fact that our first act this afternoon, after the delivery of the Speech by His Excellency, was to invite the very discussion which is now taking place. We wanted to show to the House and to the country that we are not usurping the functions of government and that we place ourselves in the judgement of the House in that regard. We are inviting expressions of opinion. I am going to address to the House a few remarks, observing moderation, avoiding the use of strong epithets and adjectives, and with a full consciousness of the ultimate consequences of the present proceedings and the result which will follow the vote which is going to be taken on this motion. This Parliament was elected on the 29th October. . . . The Government met as soon as possible after the date of the election, and after having considered the situation as created by the result, the right hon. the Leader of the Government tendered his advice to His Excellency, and in a statement which he issued and which appears in the *Ottawa Journal* of November 5, he said:

After several interviews with His Excellency, at which the position brought about by the recent general election was fully discussed and all

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alternatives presented, I have taken the responsibility of advising His Excellency to summon Parliament for the earliest practicable date in order to ascertain the attitude of the parliamentary representatives towards the very important question raised by the numerical position of the respective political parties. His Excellency has been pleased to accept this advice.

The advice was accepted by the representative of His Majesty, and as the dissolution of the last Parliament contained a proclamation that the next session would commence on the 10th December, that date was tentatively taken for the meeting of the House of Commons, if the returns of all the members could be sent in prior to that date. Later it was found—and the Chief Electoral Officer gave advice to that effect—that the returns could not be sent in prior to the 10th December, that the earliest possible date for the summoning of Parliament would be in the early days of January, and the 7th January was fixed for the opening of Parliament. Meanwhile, the Government expressed its intention not to make any important appointments to public positions in Canada, and indeed that no question of real importance would be settled, until the representatives of the people had a chance to decide who were going to constitute the executive in the next Parliament. This decision has been sharply criticized by the right hon. Leader of the Opposition who issued a statement on November 6, characterizing the decision of the Prime Minister as follows:

The Premier's statement, stripped of its sophistry—

I recognize there the language of my right hon. friend.

Sir HENRY DRAYTON: Good language.

Mr. LAPOINTE: The statement continues:

—stripped of its sophistry is merely an announcement of his determination to hang on—

SOME HON. MEMBERS: Oh, Oh.

Mr. LAPOINTE: I see that those words are sweet to my hon. friends on the other side—

—in defiance of a heavily adverse verdict from the people of Canada. To cling to office under such circumstances is usurpation of power and contempt of the popular will.

The attitude of the Leader of the Opposition was supported with amplification by his followers both in the membership of the House and in the press, and we have been subjected to a campaign of recrimination, insincere criticism, and frequently violent vituperation. I rise to-day to defend the public honour of the right hon. the Leader of the Government, and to show that not only had he the right to do that, but that it was his supreme duty to do it. Any other attitude on his part would have been a breach of trust, an infringement of the rights of Parliament.

My hon. friends opposite should take this seriously, because it is a serious matter. This House is the offspring of the popular will. It is the instrument chosen by the people to give effect to their will as to the selection of those who should be the executive and the Government of this country. The members of this House are the men who must express the will of the people and interpret it, if that will is doubtful in any way. They are the judges and not my hon. friend or myself nor any group in this House. The people of Canada are represented here by all the members from all the provinces, and they are the men who must decide who, in the situation created by the result of the last election, shall be the Cabinet and the executive of the Government of the country.

To fully understand this matter I think it is necessary to realize what a Cabinet or a Government is. The Cabinet or the executive consists of men who owe their position to Parliament and who are responsible to Parliament for their conduct of affairs. I cannot do better than quote the words of Walter Bagehot on the English Constitution, page 13, where he says:

The Cabinet, in a word, is a board of control chosen by the legislature, out of persons whom it trusts and knows, to rule the nation. The particular mode in which the English Ministers are selected, the fiction that they are, in any political sense, the Queen's servants, the rule which limits the choice of the cabinet to the members of the legislature—are accidents unessential to its definition—historical incidents separable from its nature. Its characteristic is that it should be chosen by the legislature out of persons agreeable to and trusted by the legislature.

In the United States the first magistrate, the President, is selected by the people directly. In Great Britain, as in Canada, the executive is selected by Parliament, by the representatives of the people. Here it is the main business of Parliament to select and to maintain the executive. The House of Commons in this matter acts as the adviser of the Crown, and this great power is placed in its hands, not for mere political purposes, but in the public interest. It follows that the executive represents the dominant phase of popular opinion in so far as it can be consolidated and organized in favour of an immediate programme. It follows also—and my right hon. friend knows it as well as I do—that when the House overthrows a Government, as my right hon. friend would wish this House to do, it must be to select a new Government which is likely better to represent the opinion of the country.

SOME HON. MEMBERS: Hear, hear.

Mr. LAPOINTE: Well, if a Government headed by the right hon. gentleman who leads the Opposition would represent better the feeling in the whole of the country, it is for the House of Commons here to say so. . . .

May I point out also that from the legislative point of view, laws

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are the expression of the spirit, of the mentality and of the character of those who originate and inspire them, and it is the duty of this Parliament to decide now who, during its life, will inspire and originate such laws as may be enacted—and those laws, as I have suggested, should be in keeping with the spirit and the mentality of the majority of the people of this country. If this vote asserts that Parliament, as representing the Canadian people in this chamber, desires the present Government to remain in office, then surely the whole structure of the argument of my right hon. friend the Leader of the Opposition (Mr. Meighen) falls to the ground and crumbles. On the other hand, if Parliament decides that some other Government shall be selected as the executive in this House, then the Leader of the Opposition will form that Government with authority; and in either case the supremacy of Parliament will have been vindicated.

Why should my right hon. friend desire to become the Prime Minister of Canada if this Parliament does not want him? Parliament is going to decide the question; therefore I feel like asking whether my right hon. friend, to use his own choice expression, is so thirsty for the sweets of office that he cannot wait for the expression of their support on the part of the members of this House. . . .

Another aspect of the situation with which I desire to deal briefly is the defeat of the Prime Minister in his constituency, and his temporary absence from the House. This has been the subject of strong criticism on the part of some hon. gentlemen opposite, also in the press, and my right hon. friend the Leader of the Opposition referred to it this afternoon in terms of bitterness and contempt which I believe would have come with better grace from one who had not gone through his own experience of 1921. . . .

The abstention of the Prime Minister from securing a seat for the opening of this Parliament is the logical and direct sequence of the situation I have described. Having advised the summoning of Parliament for the purpose of deciding the issue as to who should constitute the Government, and having decided to refrain from making appointments to public office in the meanwhile, the Prime Minister had debarred himself from taking the usual step—I should have said the only step—which would have created a vacancy in the House. It is true that in 1921 the right hon. Leader of the Opposition, who had been defeated in his constituency, did appoint a member of Parliament to public office before he resigned as Prime Minister, for the purpose of creating a vacancy and securing a seat for himself in this House. My right hon. friend (Mr. Meighen) may believe that he was right in doing that, and that my leader is wrong in doing the other thing. There are many people in this country who will think otherwise; and I may add that the action of the Leader of the Opposition in that respect was strongly criticized. . . .

Yesterday, when you, Mr. Speaker, were proposed for the office

of Speaker of the House, the right hon. Leader of the Opposition said that I could not speak as a member of the Government because there was no Government. I claim that my right hon. friend is not the judge in this matter. He is one of two hundred and forty-five and the other two hundred and forty-four have just as strong a voice in the selection of the executive as my right hon. friend. I say that this Government does not want to remain in office one day or one hour, unless the Parliament of Canada approves of it. As I said, we took the first occasion open to us to acquaint the House with the question before us. . . .

We are an elected chamber, a body of men sent here by the people of Canada. We are equal and our followers are equal. We recognize no master and we have the right to decide this issue which is placed before us in a positive way. We are here giving to the country and the world the spectacle of a Parliament which is going to decide in full consciousness of mind, with moderation and coolness, what is to be done in the situation which has been created by the recent election in Canada. I appeal to my western friends, who are lovers of democracy, and I ask, what step could be more democratic or more in accord with the spirit of representative Parliament and representative institutions. And I add that when this vote is taken, when the issue is settled, no Canadian can deny that both Government and Parliament have done their duty in the matter. I hope that the discussion may be brief. We all desire the situation to be regularized, in order that we shall have a Government with full moral and political authority for the tasks, domestic, imperial, and international, that lie before it. (N.B. Mr. Meighen's amendment was defeated by a vote of 123 to 120.)

D. THE CABINET AND LEADERSHIP

(Frank H. Underhill in *Canadian Forum*, January, 1930, pp. 116-17.)

... The one fundamental subject to be discussed in a comparison of Canadian and American Governments is the question of what actual differences have resulted in practice between the American system of the separation of powers and our system of Cabinet government. In Canada most of us have taken the distinction between the two types of machinery as ultimate and beyond discussion. We have been brought up in high-school and university to repeat Walter Bagehot's comparison between parliamentary and presidential government with parrot-like fidelity; it has become as necessary a part of our mental equipment as a belief in the doctrine of the Trinity or an abhorrence of Communism. It has never occurred to us to ask ourselves whether our imported English machinery works in the same way as Bagehot described it as working in England.

The orthodox belief is that the Cabinet system provides a unity in control and policy such as is impossible in the United States where

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the head of the executive has to conduct a constant struggle with the two houses of the legislature. But is that the real result in Canada? Ask anybody in Ottawa. The fact is that Ottawa is the scene of exactly the same sort of warfare between competing economic and sectional interests as goes on constantly at Washington. We have all been watching the battle over the American tariff during the past summer and congratulating ourselves pharisaically that we are not as those people. But has our tariff ever been made at Ottawa in any other way? Has there ever existed at Ottawa a Cabinet which had a mind and a policy of its own about the tariff? Of course not. We talk of our Cabinet system as giving us a concentrated control over financial policy as if we had never read of the Finance Minister's changing his mind even after he had introduced his budget when some sufficiently powerful interest could put pressure on him. Policy at Ottawa as at Washington is the result of a complex process of wire-pulling and bargaining among competitive interests. We have been made more familiar with this process as it goes on at Washington. And here we come upon the one significant difference between the governments of the two capitals. They have better newspaper reporters at Washington.

One may add that the essential resemblance between the party systems of the two countries does not consist in the fact that the parties have national conventions to draw up platforms and choose leaders. It consists in the kind of platforms they draw up and the kind of leaders they choose. It cannot be too often repeated that Burke's definition of party has no application to North America. A party in North America is nothing but a bundle of sectional factions held together by a common name and a common desire for the spoils of office. It never has a clear-cut policy on any controversial question simply because it has members belonging to too many geographical sections. The only parties we have who fit Burke's definition are the local groups (such as the U.F.A.) who can be consistent because they do not have to collect votes from other sections of the country. Our geographical and economic conditions determine the kind of parties we have, and the character of our parties determines the character of our government. Because this is so, questions about the constitutional relationship between legislature and executive are comparatively insignificant. If we in Canada were to start to-morrow by electing a President and a Senate and a House of Representatives on the American model it would not make a particle of difference to the essential processes of government as they are going on at Ottawa to-day.

The unreality of the debate between parliamentary and presidential government is illustrated most vividly by the quality of the men who reach Ottawa and Washington, and the quality of the leadership which they provide for their respective nations. If our theories about the

Cabinet system had any relation to the facts it should be possible for us to achieve a more effective leadership because control and responsibility are concentrated in the Cabinet and its Prime Minister. Yet the significant fact is that the United States has produced in the last generation a Roosevelt and a Wilson who, in spite of all the difficulties of divided control at Washington, were able to pursue a definite and constructive policy and to impress their personalities upon the whole public life of the country. When this can happen twice within twenty years, and when it seems likely to happen again in the case of Mr. Hoover, most of the talk about the impossibility of leadership under the system of separation of powers becomes academic. What has our system to show in comparison with Roosevelt and Wilson? The truth is that the system matters very little. When the people are in the mood for constructive action by their national government they will equip themselves with Roosevelts and Wilsons; when they are feeling politically tired they will be content with Hardings and Coolidges—or with Kings and Bennetts.

We in Canada are suffering from a literary theory of our constitution. It prevents us from realizing how British institutions when transplanted to America actually work, and it is high time that we shook ourselves free from it. Perhaps a good preliminary step towards this end would be to place Burke and Bagehot upon a Canadian Index.

E. RESPONSIBILITY OF THE CABINET TO THE HOUSE OF COMMONS

(*Canadian House of Commons Debates*, February 12, 1923, pp. 208-31.)

Mr. WILLIAM IRVINE (Calgary East) moved:

That, in the opinion of this House, a defeat of a Government measure should not be considered as a sufficient reason for the resignation of the Government, unless followed by a vote of lack of confidence.

... My resolution does not deal with any theory but with an actual condition; and I am disposed to think that if there is any objection offered to the passing of this resolution it will have to be offered on theoretical grounds, for I believe it would be difficult to maintain by argument that there is anything of real democratic value to be gained by the continuance of the practice against which this resolution declares. The condition with which we are dealing is that in the process of development our system of government has finally come to be government by a cabinet. . . .

... Parliament to-day, I maintain, is dominated by the Cabinet through the party caucus, and much more of our boasted democratic liberty is pure theory. Theoretically, the Cabinet is responsible to Parliament, and Parliament, in turn, is responsible to the people. The actual condition, however, is that the Cabinet is responsible to

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those who appoint it, and as the Cabinet brings forward its policies and ensures support of them by a prearranged majority, it is not in any real sense responsible to Parliament. Of course, Parliament is allowed to discuss the policies of the Cabinet, but an effective majority has been arranged for. The policies of the Cabinet have been already drawn up, they are outlined in the Speech from the Throne, and will be carried through in the manner and to the extent desired by the Cabinet, provided that the majority party is strong enough numerically to outvote the rest of Parliament.

It is contended that such a party, namely, the majority or government party, represents the voice of Parliament because it is a majority. Again theoretically, this is perfectly true; but practically it is not true. A mechanical, mathematical majority may not represent the voice of Parliament. Under the conditions that exist to-day members of the majority party may be compelled to vote contrary to their best thoughts and their declared principles. A system which puts a member of Parliament in that position is defective both from the point of view of the mentality and the morality of Parliament. This practice of Cabinet control by threat of election has a tendency to confuse the issues upon which members are called upon to decide, and it has the effect of placing them in a position which to say the least is at times very uncomfortable and very embarrassing.

But, it may be asked, what magic power has the Cabinet over the majority or government party so as to ensure that its measures will be upheld at all times? That magic power is exercised by confusing the issues which may be brought before Parliament with the life of the administration, so that the government party is left with the alternative of supporting the issue or saving the administration, and it is only natural if the desire to save the administration should take precedence in the minds of most members of a government party. It is commonly understood to be the practice in Canada that if a Government is defeated on a matter of policy, or on a measure considered by the administration to be of importance, that such defeat is tantamount to a vote of no confidence, and that the resignation of the Government should follow. Not only is this so, but a Government may at any time declare an issue to be a vote of no confidence. That declaration has the effect of a whip—not the party whip, but the real shillalah held over the heads of all the Government supporters—the possibility of defeat and the bringing on of a general election. But it has the effect also usually of defeating the measure, no matter what merit there may be in the measure, because in such a case the salvation of the Government is considered first by the majority party and the measure afterwards. So really while the government party may vote against a very good measure in order to save the Government, their action is no indication of what they really think about that measure.

If the majority party had been free to vote upon such issues as have been declared by governments to imply no confidence, it is very likely that in most cases those issues would have received majorities. But in every case I believe in the history of the Canadian Parliament when the Government has treated such a vote as tantamount to a vote of non-confidence the issue has been defeated. That there is no instance so far as I am able to find—I am subject to correction of course—in our parliamentary records of a Government having been defeated under such circumstances, tends only to prove two things. It proves, in the first place, that the Governments of the past have always had a fairly safe majority; and it proves further that the majority party has given the life of the Government first consideration.

This practice is not at all an aid to responsible government, as some would have it, indeed, it is rather a hindrance to that desirable end, for we find that by this practice the principle of responsible government has been inverted. To-day the individual members of the government party are responsible to the Cabinet instead of the Cabinet being responsible to the individual members of the party. What chance has the courageous individual, who can still think clearly even under threats of a general election between the merits of a government measure and the defeat of the Government, and who is prepared to stand up for the principle in which he believes—what political future in a party has such an individual? He is really held responsible to this Cabinet for his action on the vote, instead of the Cabinet being held responsible to him for their action when he votes. That, I maintain, is an inversion of the principle of responsible government.

I want to turn briefly to a few instances in the history of the Canadian Parliament in which this practice has been seen in action; and I am going to take the most recent instances so as to be within the memory of hon. members of this House. I shall first refer to a resolution which was introduced when Sir Robert Borden was in power, embodying a proposal to discontinue the granting of titles in Canada. According to page 2364 of Hansard of May 21, 1918, Sir Robert Borden said, referring to the proposal contained in the resolution:

I can only say, so far as I am concerned, that if the House does not propose to accept the course which I have asked them frankly and with much respect to take, I should consider that I am relieved from my duty of carrying on any longer the government of this country, and I should ask His Excellency the Governor-General to seek other advisers.

I knew personally a number of members of the government party of that day, and am convinced that they were just as anxious for the abolition of titles in Canada as the hon. member who moved the resolution was, yet I find that they voted with the Government against

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the resolution in which they believed. There we have a concrete example of this practice. One might, of course, comment upon the attitude of the Government in associating the trivial matter of a motion regarding titles with the defeat of the administration; but that is not a point to be considered here. The fact is that by confusing the issue of the abolition of titles in Canada with the life of the Government, those who supported the abolition of titles voted against their principle in order to protect the administration. That was the situation then, and it is often found to be the situation even to-day. . . .

The next instance to which I wish to refer is that which had to do with the amendments moved to the Address in reply to the Speech from the Throne at the present session. You will remember that when the amendments were moved, the hon. Minister of Finance (Mr. Fielding) declared that no self-respecting Government could possibly accept them. . . .

. . . My humble opinion is that the Government would have been really more self-respecting if it had accepted these amendments. Of course, I could not presume to tell the hon. Minister of Finance what he should and should not do as a parliamentarian, but that was my humble opinion. However, the hon. gentleman did declare that the resolution moved by the hon. member for Springfield (Mr. Hoey), and also the amendment to the amendment moved by the hon. member for Calgary West (Mr. Shaw), constituted motions of no confidence, and that complicated the situation so much for the members of the party that they found themselves on the horns of a dilemma, and most of them stuck on the horns. The fact is, we know as well as we can know anything with respect to anybody, that there are a great number of hon. members on the other side of the House who do believe in the reduction of the tariff, and who under different circumstances would vote for such a resolution; yet only one of them remembered his principles on that occasion, and all the rest voted with the Government. . . .

Right Hon. W. L. MACKENZIE KING (Prime Minister). . . It might be expected, as the hon. member for Calgary West (Mr. Shaw) has just said, that the Government would be the first to welcome this resolution. And possibly a Government that has the very slender majority which this Government has might be expected to be among the first to desire to accept it. . . . When one considers that the present administration has behind it a majority of possibly but one or two over that of the other parties in the House, one might readily assume that the Government would welcome any kind of change which would justify it, in case of the defeat of some measure before the House, in holding on to office and refusing to go to the country. Were we to give our support to this resolution, the first criticism that would be levelled against us would be that we had accepted it because we had

at last found some means whereby we could retain office in the face of an adverse vote. . . .

Now, may I say to my hon. friend that I fear his resolution, well intended as it is, would have an effect entirely different to that which he believes it would have? It is in the interests of the Government in any country that every precaution should be taken to see that a Ministry in bringing down legislation does so only after the most careful, deliberate, and mature thought, and that in presenting their legislation to Parliament they present only legislation which they believe to be necessary in the country's interests. Permit the Ministry to use its own judgement in the matter of whether or not it shall resign upon its legislation being defeated, and it will soon begin to introduce all kinds of legislation without very much thought. You open the door to the introduction of measure after measure that is half-baked, once the Ministry know that if defeated on particular measures it may, by skirmishing about and by conferences here and there with different members of the House, get itself re-established in a position where it can continue to carry on. That would be much against the interests of good legislation; it would tend to make a ministry not more careful, but possibly indifferent, with respect to some of the measures it might bring before the House.

There are, after all, times and places for everything. There are times when confidence in an administration should be expressed, and when any contrary attitude should have serious consequences. One of those times is on the consideration of government measures. Our parliamentary practice, which, as I have already mentioned, is the result of wide experience extending over many years, has fixed certain times and certain places for the expression of confidence, or the reverse, in a ministry. My hon. friend mentioned three instances, I think, which he regarded as supporting his resolution. The first was the attitude of the Government of Sir Robert Borden in the matter of titles; he said in this connexion that he thought in some way the members of Parliament had been precluded from freely expressing their views on that subject. But I ask my hon. friend, what was the view that the Parliament of Sir Robert Borden's day took on this very matter of titles? It was the Parliament of that day that adopted a resolution abolishing titles altogether. The members of Parliament were not prevented from expressing their views on the subject of titles. They had ample opportunity to do so, but there was a time and place for a resolution of the kind. When it was brought in at the appropriate time and at the right place, the resolution carried, notwithstanding the fact that the Government had at another time felt that the adoption of such a course with reference to a Government measure would have placed it in a false position in view of a stand it had previously taken or pledges or promises it may have made. . . .

Take the other instances to which my hon. friend has referred, the

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amendments to the Address. . . . One of them related to the question of economy. I submit, Mr. Speaker, that had the hon. member who moved that amendment waited until the Government had presented to Parliament the estimates for the present year, he and other hon. members of this House would have been in a better position to express themselves on the question as to whether or not the Government was seeking to effect economies. Yet before the estimates are brought down; before, under our parliamentary procedure, the Government had had any opportunity to lay before hon. members of the House a statement of what its expenditures were likely to be, hon. members were asked, through the amendment introduced, to express themselves in a manner which seemed to imply that the Government had not been doing its utmost in the matter of effecting economies.

Take the other resolution that was moved. At the time of the presentation of that motion hon. members were not aware of what the Government's policy in respect to trade matters was likely to be. . . . Why, then, should a debate be precipitated on tariff matters before Parliament has before it in the regular way the information which it ought to have in passing upon a matter of the kind? Furthermore, it is open to any hon. member, when the House is being moved into committee of supply, to introduce a resolution to discuss the various subjects to which I have referred. . . .

May I say a further word, Mr. Speaker, in regard to what my hon. friend has said on the subject of party caucuses? Here again we notice a tendency which has become all too prevalent in recent years, that of finding fault with old customs and methods of doing public business. The caucus in the minds of some people to-day is supposed to be a very wicked kind of thing. In some way, it is assumed that through this instrument the Cabinet can do what it wishes with its followers, but many of those who have been strongest in condemning the party caucus so-called have been among the first, I have noticed, to recognize that they can get nowhere in understanding the views of their own following until they have a caucus themselves and discuss questions before its members.

Now what is a parliamentary caucus, when one comes down to it? It is nothing more than a gathering of a certain number of members of Parliament. In a case of a Government caucus it is a bringing together of the majority of members in the House of Commons supporting the Government. It is the means whereby a Government can ascertain through its following what the views and opinions of the public, as represented by the various constituencies, may be. It is not a means of over-riding Parliament. It is a means of discovering the will of the people through their representatives in a manner which cannot be done under the formal procedure which is required in this chamber. That is what a party caucus amounts to. A Government ought to seek continually to give expression to the public will. A Government has

to be careful in the matter of the legislation it brings into Parliament, to be sure that it is in accord with the public will. How can that best be ascertained? Wait until the legislation is brought down in Parliament and put on the Table? Or by a conference with the Government's own following, if there is any doubt one way or the other in regard to any phases of the legislation? After all, what a Government has to keep before it, if it is to be worthy of the name of a Government, is first of all the support it will receive in the country for the measures it introduces; secondly, the support it will receive in Parliament. The Government should continually endeavour to bring in legislation which it feels is in accordance with the needs and desires of the people at large, but there may well be occasions where a Government may be obliged to have a further conference with its own following to ascertain whether or not the particular views which it is about to present in the form of legislation are to all intents and purposes in accordance with the wishes of the people, as they understand them. That is in the interests of democracy. That is not taking away any rights from the people's representatives in Parliament. It is simply coming into closer consultation with the people's representatives in a manner that permits of the greatest freedom of expression on their part.

... The position to my mind is exactly the same whether there are three parties or thirty. A Government that cannot bring together a group of men, no matter where they are taken from, sufficiently strong to command the confidence of those who compose a parliament has no right to exist. How is public business to be carried on in a manner which will inspire confidence in the country unless a Ministry is able to say to the public: With our knowledge of affairs, acquired as only a Ministry can acquire it, we believe such and such legislation necessary for the country; we think this or that measure absolutely essential to meet a situation we are face to face with to-day; we give our reasons, give them publicly on the floor of Parliament, and if our reasons are not accepted, we shall appeal to those from whom our authority is derived and ask them, if they are unable to give us their support, to put some one else in our place. The idea that the Ministry should be in any way restricted in its appeal to the people at any time is the very antithesis of democracy. The whole effort manifest in the evolution of government has been to bring the Ministry to the point where, if for any reason whatever, it ceases to hold the confidence of Parliament it will be obliged to go to the people. Once you take away that safeguard, you have substituted possibilities of autocracy for what is after all the strongest factor in the maintenance of democratic principles of government. . . .

Right Hon. ARTHUR MEIGHEN (Leader of the Opposition): I am opposed, Mr. Speaker, to the resolution of the hon. member for Calgary East (Mr. Irvine). . . .

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Should the resolution pass, I really do not think even any difference in the present practice would then obtain. The Government is at liberty to resign any minute. The Government is ultimately the sole judge of what shall be sufficient or insufficient cause for its continuance or discontinuance in office; nor does the hon. member for Calgary suggest that a Government in this regard should be finally restrained at all. In answer to the very pertinent inquiry of the hon. member for New Westminster (Mr. McQuarrie) the mover said: 'No, I would not suggest the rights of a Government to resign should be abbreviated. I am quite prepared that these rights shall remain just as ample as they are to-day.' Even should the resolution, as it is understood by its sponsor, carry, a Government could then take any vote of the House as a vote of want of confidence and retire. Its liberty of action in that regard would not be restrained in the least.

Then I am asked: What would be the consequence of the resolution carrying? Well, it would simply be a declaration by the House that the Government would be wrong—even though it had quite a constitutional right—it would be wrong in exercising liberty of action, unless an adverse vote were followed by another vote declaring want of confidence. I am not prepared to subscribe to that declaration. I do not think such a declaration would have any appreciable effect on the action of a Government at all, but I am not prepared to subscribe to an assertion that a Government would be wrong in exercising its undoubted right of resignation and determining for itself when a vote in Parliament was such that it made it in the public interest not wise for the Government to continue. . . .

Every case must be judged in the light of the circumstances that surround it, and I would mention some of the pertinent circumstances as these: First of all, the importance of the measure; that is to say: Does it form an integral part of public policy of the Government, or does it not? If it is merely incidental, then that would be a factor to take into account and would tend to lead a Government not to take an adverse vote as necessarily fatal to tenure of office. But that alone would not be the only factor. A Government would also have to inquire how far that particular piece of legislation, or that adverse vote, perhaps, on a resolution from the other side, affected the commitment of the Government to the people of the country, upon which commitment it was returned to office. That would be a fundamental factor as well.

Another factor would be this: How long has the Government been in office? If a Government is newly returned with a strong and popular majority, then it would not be affected by as light considerations as might be regarded of moment under other circumstances. Still a fourth factor would be this: How far do indications within Parliament and beyond Parliament reveal the support of the Government in the popular mind? If, by the evidence of by-elections, if, by

what other evidences might be prominent, a Government felt that it was losing popular support, then it would not take so important an adverse vote in Parliament to justify its accepting that vote as want of confidence and resigning. All these things must be taken into account; but the tendency of the years has been to restrict the right of Government to hang on to office rather than to amplify that right in the presence and under the mandate of an adverse vote of Parliament.

I do not subscribe to the viewpoint that the Government of Canada is in the nature of a hired servant whose only duty is to obey the directions, the orders, the mandates of the representatives in Parliament who support it, of Parliament as a whole, and of the populace of the country. I do not subscribe to the theory that the Government is in the relation of a hired man to this House. I do not believe in the hired man theory at all; I did not believe it when I was in office and I do not change my belief when in opposition. Such a theory is entirely at variance with the whole idea of constitutional government. The Government is in no sense the hired man of the House of Commons; it is not a committee of the House of Commons. We had that theory brought forward last session, and these words came from the mouth of the Prime Minister, although we did not hear much to that effect this afternoon. The fact is that the theory is wrong; it is not British at all. I repeat, a Government is not a committee of the House of Commons: it is the responsible body of officers of the King in this country. The duty of the Government is to lead public policy, domestic and foreign. The Government must submit their proposals to the people's representatives and must abide by the verdict of those representatives, favourable or unfavourable, whatever it may be. And a country that is accursed with a Government that has not within itself the power of leadership, of showing what the right road is in the light of information that only a Government can have, is going to suffer in the race in this world. It is not going to enjoy what it ought to enjoy; it is not going to get the service it ought to get from the Government that leads it. A Government must submit legislative proposals and must take the leadership, because it is in a position to take leadership; and those who hold the theory that leadership can be taken by the rank and file are opposed to a principle which it seems to me has been vindicated by the march of centuries, of ages. Those in authority must lead. The British constitutional practice has led to this result. While they lead, they may be checked, they may be directed, they may be hurled from power as the penalty of failure. But failure to lead is just as great a failure as any other. The Government is answerable for its legislative proposals to this House in just precisely the same way as it is answerable for its administrative acts; it is responsible for the one as it is responsible for the other. It is charged with the responsibility of initiating both, and the Government

that fails in either respect does not do its duty by the people of the country which it is supposed to lead.

Now, I do not deny for a moment that some of the difficulties which hon. gentlemen to my left have expatiated upon to-day do arise as a consequence of that practice. I do not deny at all that times arise when members of this House have to decide between the support of a measure, on which perhaps the balance of influence, in their own minds, say, would be favourable, and voting against it, when they know that a vote against that measure is a vote of want of confidence in the administration. I know that the consequence is that the question of confidence comes into the question of the merits of the specific proposal or the specific legislation. If that is confusion, then to that degree there is confusion. But that we must abide by. There is no way by which that can be surmounted, except at a cost that would be far greater than any possible results of confusion which hon. gentlemen may have in mind. If a Government could come into the House and, either through one of its own members or through a private member, propose a course of fundamental public policy going to the very root of the prosperity of the country, going perhaps to the very root of our national destiny, and then, having been defeated upon that and having found that it does not meet with the favour of the House, say, 'Very well, we will wait a few weeks and come back again with another proposal and see whether it will not meet with approval at the hands of Parliament; after we have tested the situation we will come again,'—if that could be done, I say, then the moral authority of Government would be gone. If that could be done no Government could command any respect. There are times, on matters of minor consequence, where perhaps it is justifiable for an administration to leave to the general vote of Parliament, without the lead of Government, the direction of its course. But necessarily that must be in regard to a matter of minor consequence; and necessarily, also, it must be rare. For if even that were to occur frequently—and I am making no reference to the present administration, because so far they have not done it frequently—if the Government were to come frequently to Parliament and say, 'Upon this subject we cannot unite, upon this subject we have no opinion, we will leave it to you and will act merely as your messengers and carry out whatever you say, because we have no opinion to offer ourselves,' then, I repeat, the moral authority of Government throughout the country would be impaired day by day. And no Government could long last in this Dominion or in any other British country that frequently submitted itself to the exigencies of situations such as that. Occasionally, I say, it is possible.

Let us for a moment just review the occasion last session when it did occur. The Government had no united view on the question of the admission of oleomargarine into this country. Consequently,

they said to Parliament, 'We cannot unite; we have no opinion as a Government. You discuss it now and decide what you want and we will carry out your wishes, whatever they may be.' Parliament discussed the matter and decided on the permanent admission of oleomargarine into the country. The Government found that they could not accept that decision. A division in the Government made it impossible to carry out the recommendation. What did they do? They came and said, 'We promised to carry out your wishes but we cannot. However, if you will meet us half way we will meet you and admit oleomargarine for twelve months.' And we had the spectacle in the House of the Minister of Agriculture (Mr. Motherwell) standing in his place, the sponsor of a measure which he described in his own classical language as a rotten old Bill. Now, that was a consequence of one of the departures from the constitutional principle. Let these instances be rare; and especially, I suggest, let them be rare on the part of the present administration. For any moral authority which it may have enjoyed a year ago is very seriously reduced just now. Do not let that moral authority be prejudiced by failure to unite on important measures of any character. Let the Government show to the country that it is united and that it can advance opinions that are Government opinions and policies that are Government policies. The more we follow that course the more we shall lead to the result where there shall be the most immediate answerability of Government to Parliament. And that, as I understand it, is the perfection of British institutions.

F. THE CABINET'S USE OF THE REFERENDUM

(*London Times*, March 11, 1930.)

TO THE EDITOR OF THE TIMES.

Sir, In considering the function of the Referendum in this country, perhaps Canadian experience is more directly relevant than Swiss. There are three ways in which the Referendum may be used:

(1) It may be used as a direct method of legislation. This is provided for by several State constitutions in the United States, but is obviously unsuitable to this country.

(2) It may be used as a means of informing the Government and Legislature of the state of public opinion upon a particular question without relieving the responsible Government of the duty of deciding upon the action to be taken in the light of the information thus obtained.

(3) It may be used in the form of conditional legislation. That is to say, the operation or repeal of a particular law is made to depend upon the result of a popular vote.

In the few cases in which the Referendum has been actually used in Canadian politics it has generally been employed because of the unwillingness of the regular political leaders to make up their minds.

To a certain extent the chief two political parties in Canada have gone through the same process of development or decay as the Republicans and Democrats in the United States. That is to say, they have practically ceased to have any distinctive policies to justify their continued existence, and in consequence are reduced to framing temporary policies to put forward at each successive election. Naturally these so-called policies are framed upon the vote-catching principle, and each side is therefore desperately afraid of committing itself definitely upon any real issue which in fact divides the great mass of the electorate. In particular, the two Canadian parties, like those in the United States, have until recently been afraid of taking sides upon the question of liquor legislation, which has been the commonest subject of a Referendum in Canada. In other words, the Referendum in Canada has proved to be a device by which political leaders seek to place upon the electorate the burden of deciding certain important issues which they are afraid to decide themselves.

I now pass on to give a few examples of the actual use of the Referendum in Canada:

In 1898 the Federal Government determined to take a national vote upon the general question of prohibition. This resulted in a vote of 278,380 in favour of prohibition and 264,393 against—a majority of 13,987, or about $2\frac{1}{2}$ per cent. of the total vote cast. The whole population of the Dominion at that time was about five and a half millions, so it is clear that the majority of the electors had not taken the trouble to vote at all. Upon these facts the Dominion Government decided—and in my opinion rightly—that there was not sufficient evidence of popular support to justify a sweeping change in the law, and the existing local option law was allowed to remain in force. This is a good example of the use of the Referendum as a means of obtaining information, the action of Parliament being left entirely to its own discretion.

In Manitoba the electors were invited in 1923 to vote upon two distinct propositions, the province at the time being under a strict prohibition régime, which in its turn rested upon a statute of 1915, approved by a popular vote in the following year. The questions now submitted invited the voters to say (a) whether they desired Government sale in place of the existing law; and (b) whether, in the event of an affirmative answer to the first question, they desired to legalize the sale of beer and wine in hotels. The result of the vote was to approve of Government sale and to disapprove of hotel sales, in each case by very substantial majorities. The Provincial Cabinet at the time was prohibitionist in sympathy, but it had itself submitted the question to the people, and therefore felt under a moral obligation to introduce the appropriate legislation, which was soon passed into law.

A good example of the use of the Referendum as a means of conditional legislation is to be found in the Dominion statute of 1920 commonly known as the 'Doherty Act'. By this it was provided that any province in which prohibition existed might take a Referendum upon the question of prohibiting the importation of liquor from other provinces. At that

date seven out of the nine provinces were under prohibition laws, and they all voted in favour of forbidding importation. In such cases the Referendum is made a condition precedent to the law becoming effective in a particular case.

To my mind the Referendum is a political expedient which should be very sparingly used only for the purpose of ascertaining public opinion upon matters of general public interest and in those cases where a strong public opinion is essential to the effective working out of any particular law. It should not be used as a means of diverting responsibility from those to whom the responsibilities of government have been entrusted. The principle of democracy is not intended to relieve Governments and Legislatures from the obligation of deciding public questions, but only to make them accountable to the people for their decisions. In other words, it is the business of rulers to rule.

I am, Sir, &c.,

H. A. SMITH.

London School of Economics, March 7.

III

ORGANIZATION OF THE CABINET AND ADMINISTRATION

A. THE WAR CABINET

I. REPORT OF THE COMMITTEE OF THE PRIVY COUNCIL, OCTOBER 23, 1917 (P. C. § 3005; *Canadian Sessional Papers*, 1918, No. 50.)

The Committee of the Privy Council have had before them a report dated 19th October, 1917, from the Right Honourable the Prime Minister setting forth the advisability of constituting a permanent Committee of the Cabinet during the progress of the War and until after demobilization to be invested with the powers and charged with the duties hereinafter set forth:

The Prime Minister observes that in his opinion the constitution of such a Committee is advisable for the purpose of co-ordinating the efforts of the several Departments of the Government for the prosecution of the War, for ensuring the maximum of effort with the minimum of expenditure, and generally for the purpose of throwing the full power of Canada into the national endeavour.

The Prime Minister recommends that the Committee shall be constituted as follows:

The Prime Minister, Chairman.

The President of the Privy Council, Vice-Chairman.

The Minister of Militia and Defence.

The Minister of Finance.

The Minister of Marine and Fisheries and of the Naval Service.

The Minister of Justice.
The Minister of Public Works.
The Minister of Customs.
The Postmaster-General.
The Minister of Overseas Military Forces.

The Prime Minister further recommends that the Committee shall be designated as the War Committee and that it shall be charged with the general consideration of the matters aforesaid and especially that it shall inquire into and report to Council upon the status and maintenance of the military forces of Canada, the enforcement of the Military Service Act, 1917, the defence of our coasts and the patrolling of territorial and adjacent waters, the arrangements for garrisons and outposts in Canada, the training and equipment of troops, the internment of aliens, the prohibition and regulation of imports and exports and the granting of licences therefor, the arrangements with the Government of the United Kingdom and with the Governments of the Allied Nations respecting any of the matters aforesaid, and generally speaking all matters relating to the efficient prosecution of the War so far as Canada is concerned. . . . The Prime Minister recommends that special attention be given to the increased cost of living. . . .

The Prime Minister further recommends that the Committee be empowered to report to Council from time to time and that it be authorized to appoint sub-committees from time to time to consider any particular subject requiring special investigation; and that it may authorize any such sub-committee to bring into consultation as members of the sub-committee in question any person or persons of special experience or knowledge therein.

The Prime Minister further recommends that the Committee shall hold periodical meetings at such intervals as it may determine; that in the absence of the Chairman, the Vice-Chairman shall preside at such meetings; and that three members shall constitute a quorum.

The Prime Minister further recommends that the Committee may appoint a Secretary who shall perform such duties as the Committee may determine.

The Committee concur in the foregoing recommendations and submit the same for approval.

2. REPORT OF THE COMMITTEE OF THE PRIVY COUNCIL, OCTOBER 23, 1917
(P. C. § 3006; *Canadian Sessional Papers*, 1918, No. 50.)

The Committee of the Privy Council have had before them a report, dated 19th October, 1917, from the Right Honourable the Prime Minister, setting forth the advisability of constituting a permanent Committee of the Cabinet during the progress of the War and until after demobilization, to be invested with the powers and charged with the duties hereinafter set forth.

The Prime Minister observes that having regard to the conditions of Canada as affected by the present War he has been impressed by the following considerations:

(Here follows a long statement of urgent problems including the following: the investigation of opportunities for developing the resources of the Dominion; the preparation of a scheme of immigration and colonization; the settlement of returned soldiers on the land; general economic readjustments due to the War and peace; transportation by rail, water, air, and highway; public revenue and expenditure; avoidance of general economic waste; increased co-operation in agriculture; labour problems; employment of women; 'all matters which generally speaking have relation to the development and progress of our country with especial regard to the conditions created by the War or arising upon the conclusion of peace.')

The Prime Minister recommends that the Committee be empowered to report to Council from time to time and that it be authorized to appoint sub-committees to consider any particular subject or subjects requiring special investigation; and that it may authorize any such sub-committee to bring into consultation as members of the sub-committee in question any person or persons of special experience or knowledge therein.

(Here follow the same clauses as in the preceding Order in Council as to periodical meetings, Vice-Chairman, quorum, and Secretary.)

The Prime Minister further recommends that the Committee shall be designated as The Reconstruction and Development Committee and that it shall be constituted as follows:

The Prime Minister, Chairman.

The Honourable Mr. Maclean, Vice-Chairman.

The Minister of Trade and Commerce.

The Minister of Finance.

The Minister of Railways and Canals.

The Minister of Immigration and Colonization.

The Minister of the Interior.

The Minister of Agriculture.

The Chairman of the Military Hospitals Commission.¹

The Honourable Mr. Robertson.

The Committee concur in the foregoing and submit the same for approval.

B. THE ACTING MINISTRY OF 1926

(Cf. Chapter II, section II, (B).)

C. THE PROPOSAL TO APPOINT UNDER-SECRETARIES

(Cf. Chapter V, section II, (B). (1), and *infra*, sub-section E.)

¹ Sir Jas. Lougheed. The Commission was established in 1915 to provide convalescent homes and hospitals for returned soldiers.

*D. REPORT OF SIR GEORGE MURRAY ON THE PUBLIC SERVICE
OF CANADA, 1912*

(*Canadian Sessional Papers*, 1913, No. 57a, pp. 7-12.)

The Right Hon. R. L. BORDEN, K.C.,
Prime Minister.

Ottawa, November 30, 1912.

Sir,—I have the honour to inform you that, so far as the time at my disposal will permit, I have completed the inquiry, with which you were good enough to entrust me, into the organization of the public service of Canada; and I beg to submit the following report....

I. *The Methods employed in the Transaction of Public Business.*

(4) My suggestions under this head will be confined almost exclusively to the functions of Ministers and the possibility of affording them relief, leaving for a later portion of the report some other questions of departmental organization.

(5) Nothing has impressed me so much in the course of my inquiry as the almost intolerable burden which the present system of transacting business imposes on Ministers themselves. They both have too much to do and do too much.

(6) Speaking broadly, it may be said that every act of the Executive Government, or of any member of it, requires the sanction of the Governor in Council which, under present practice, is identical with the Cabinet.

(7) The number of these Orders in Council averages from three thousand to four thousand per annum, and their subject-matter ranges from questions of the highest importance, such as the approval of a treaty with some foreign Power, the disallowance of provincial legislation, the appointment of a judge, or the exercise of the prerogative of mercy, down to the acceptance of a tender for the erection of a pump, the promotion of a clerk from one grade to another, and the appointment of a lighthouse keeper or an exciseman.

(8) Almost every decision of a Minister, even of the most trivial importance, is thus—at least in theory—brought before his colleagues for the purpose of obtaining their collective approval, which is necessary for its validity.

(9) Provisions to this effect can be traced in almost every Act of Parliament which has been passed since confederation; and it seems clear that the statesmen of that time thought it necessary to ensure that the collective responsibility of the Cabinet for the action of individual Ministers should be protected by safeguards of this kind.

(10) But I need scarcely point out that a great deal has happened since 1867, and that methods of administration which may have been well adapted to the circumstances of those days have become quite unsuitable after the lapse of nearly half a century.

(11) With the increase of population, the extension of trade, and the development of the various activities of the State, the business of Government necessarily grows both in amount and in complexity.

(12) The only means by which this growth can be met is by division of labour and devolution of power. In the absence of some continuous process of this kind the machinery of government must gradually become less efficient and must ultimately break down under the stress imposed upon it.

(13) Many topics which, in the early stages of national life, may properly form the subject of collective discussion and decision, will in the course of time diminish in relative importance, and must be dealt with in some more summary fashion.

(14) The first suggestion which I have to offer is that many of the powers now vested in the Governor in Council should, by some process of devolution, be transferred to individual Ministers. At times mistakes will no doubt be made. These mistakes will occasionally be inconvenient to the Administration; and it may be conceded that some of them are such as might have been avoided by fuller discussion or consideration. But these are risks which must be run, and which are inherent in the working of any highly developed organization. Under present conditions it is practically impossible that all Ministers should take part in all decisions.

(15) Legislation would, of course, be required in order to effect such a change, since the duties to which I have referred are imposed on the Governor in Council by statute; but the legislation, though complicated in detail, would not be likely to raise many questions of a controversial character. It would, I think, be generally conceded that a Minister should be able to give leave of absence to the officers of his department; to grant statutory increases of salary; to sanction the acceptance of tenders, except where very large amounts or questions of principle are involved; to make appointments to vacancies; and to promote the clerks in his department from one class to another.

I only mention these as illustrations of the general character of the changes proposed. There are many others which will readily occur to any one who will examine the details of the existing system.

(16) I suggest therefore that a Committee of Ministers should be appointed to review the whole of the duties now discharged by Council, and select those which can safely be left to the discretion of the individual Ministers. All that would then be necessary would be to schedule these particulars, and provide by statute that the powers hitherto exercised by the Governor in Council should be transferred to the several Heads of the departments concerned.

(17) If, in view of the importance which is attached in this country to even minor appointments and promotions, such a reform is considered too drastic to be fully adopted at once, a board of two or,

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at most, three Ministers, with an equal number of permanent officials, might be constituted, and charged with the duty of considering all appointments and promotions recommended in any department. If approved by the Board, the decision of the Minister would take effect at once, or with such modifications as the Board thought advisable.

(18) Even after this relief has been given to the Governor in Council there will still remain many matters which, though of small intrinsic importance, must for various reasons receive the approval of the highest administrative authority. There will always be some decisions which, though properly taken by an individual Minister on his own responsibility, may yet require the outward form of sanction by the Governor in Council.

(19) Whenever this sanction is merely formal and does not require the collective consideration of Ministers it should be given at a meeting of Council constituted for the purpose. It is not necessary that the whole body of Ministers should attend; the minimum quorum would be sufficient for the purpose and the business, being formal, would be rapidly transacted.

(20) In other words a distinction should be drawn between a meeting of the Cabinet and a meeting of Council.

At present the Cabinet, besides performing its proper functions of discussing and deciding questions of high policy, is compelled to conduct a large amount of purely routine business. If the latter were relegated to a meeting of Council summoned *ad hoc* and in much smaller numbers, the time at the disposal of the Cabinet for its more important duties could be better employed.

(21) In this connexion reference should be made to another institution closely allied to the Council, namely, the Treasury Board.

This Board consists of six Ministers, acting as a committee of the Privy Council, and deals with such matters relating to finance, revenue and expenditure, and public accounts, as are referred to it by Council. In practice the references to it include all proposals relating to the appointment, promotion, salary, pension, leave of absence, and allowances, of any official in the public service. But, notwithstanding the unimportant character of nearly all these subjects, the Board has no power to deal finally with them. Reports have to be made to Council in all cases.

(22) Such matters do not appear to me to require the personal consideration either of Council or of a Board of six Cabinet Ministers; and in my judgement no harm could ensue if the Board were abolished and its duties discharged by the several Departments concerned; or by the Appointment and Promotion Board, if it is thought advisable to adopt the alternative suggestion made in paragraph 17.

(23) The Board has some other and more important duties to perform under the Bank Act, the Consolidated Revenue and Audit Act, the Finance and Treasury Board Act, the Savings Bank Act,

the Penny Banks Act, and the Insurance Act; but all these could be equally well discharged by the Minister of Finance, within whose sphere of action they seem naturally to fall; subject, of course, to consideration by the Cabinet when any important question of policy was involved.

(24) So far I have dealt only with the business of the Ministers in their corporate or collective capacity. I propose next to consider whether they could not be relieved of some of the work which now falls on them as Heads of Departments. At present they appear to transact in this capacity a great deal of business which need not engage their attention and could be equally well done by others. As an illustration of this, I may refer to an Order in Council of December, 1905, under which every requisition for furniture, fittings, and repairs, for all public buildings throughout the Dominion must be countersigned by the Minister of the Department making the requisition. A similar practice prevails with respect to certain articles supplied by the Stationery Department.

(25) The business of a Minister is not to administer, but to direct policy. When a Minister has laid down a line of policy to be adopted in his department, the carrying out of this policy, or in other words the administration of the department, should be left to his subordinates.

If I venture to make this statement in a rather dogmatic form it is because I am convinced that it is the foundation of any sound system of departmental organization.

(26) Under the conditions which now prevail in Canada, and to which I have already referred, it is essential that a Minister, if he is to have time for the consideration of questions of policy and for his other important duties, should be relieved as far as possible of all purely administrative work. This, of course, involves the imposition of greater responsibility on the Deputy Heads of Departments. Their duty should be to give executive effect to the Ministers' decisions; they should be charged with the whole responsibility for the administration of their departments, and should be the only channel through which the Minister acts.

(27) I realize, of course, that under any such scheme the Deputy Heads would require to be selected with great care, and that more power would be placed in their hands than under the existing system. But I cannot believe that it is impossible to find competent men to fill these positions under the new conditions which I have indicated.

(28) I have one further suggestion to make by which more relief could be given to Ministers.

Under present conditions there is only one political officer in each department, namely, the Minister in charge of it. As a Cabinet Minister he has work of the highest importance to perform outside his department; and even if the relief which I have above indicated could be afforded to him within his department, his parliamentary

and other duties would still be a heavy tax on his time, especially in the case of those Ministers who are in charge of the more important departments. I suggest that in these departments—probably four or five in number—a political Deputy Minister should be appointed who would be able to relieve the Minister himself not only of some of the departmental work but of many interviews and negotiations with Members of Parliament and others. It would, of course, be necessary that he should enjoy the full confidence of the Minister so that he could speak generally in the name of the latter without specific reference to him, and in other cases could refer for directions as occasion required.

II. The Control of Appropriations and Expenditure.

(29) By the control of appropriations I understand the methods which Parliament has prescribed for securing that the funds which it grants for the various purposes of Government are applied to those purposes and to no other. This seems to me to be adequately provided for under the existing law, which is effectively carried out by the Auditor-General.

(30) The control of expenditure may be considered from two points of view; there is the control exercised by the Government over its own departments; and the control exercised by Parliament over the proposals of the Government.

(31) The latter may, I think, be regarded as negligible for the present purpose. In theory the control of Parliament over expenditure is complete; in practice it is of little value. This is partly due to the fact that, as the Government must necessarily command a majority in the House of Commons, it can generally secure the passing of its own estimates; and partly because notwithstanding many professions of a desire for economy in the abstract, Members will generally be found demanding increased expenditure for purposes in which their constituencies are interested, rather than reductions on items which do not fall under this category.

(32) In short, the control of public expenditure must depend almost entirely on the Government of the day; and here again we shall generally find that individual Ministers, while not unwilling to acquiesce in the reduction of the estimates of other departments, are *prima facie* disposed to recommend increased expenditure in their own.

(33) The Minister of Finance, who is responsible for raising the necessary taxation is, therefore, as a rule, the only Minister who has a strong inducement to press for economy.

The point of time at which he can use his influence with the best effect is while the estimates are under consideration and before they have been presented to Parliament. Proposals for expenditure which

have passed this stage may be regarded in practice as unlikely to be further amended except in the direction of increase.

(34) The system under which the estimates are at present framed, criticized, and presented does not appear to me calculated to promote economical administration.

(35) They are drawn up, in the first instance, by individual Ministers who are likely to be influenced largely by their own prepossessions, and by the pressure put upon them by Members of Parliament.

The estimates so prepared are then subjected to the examination of the Department of Finance; but this examination, owing to pressure of time, has necessarily been of a somewhat cursory character, and directed rather to the totals of the votes than to the details.

The final settlement is arrived at in Council, usually after oral discussion between Ministers.

(36) This method appears to me to be at once wasteful of the time of the Ministers and unlikely to result in effective control, which can only be secured by persistent criticism of details, carried on by means of written correspondence in the first instance, rather than by oral discussion, and under conditions which permit of a thorough examination of the proposals.

(37) I suggest that the Department of Finance should be definitely charged with this duty. Every item of new or increased expenditures should be closely scrutinized; and the department proposing it should be called on to state in sufficient detail the ground on which the expenditure is required; the reasons which prevent its being deferred to a later date; and the consequential expenditure which will be rendered necessary in future years if the proposal is sanctioned.

(38) I think it is important that these proceedings should be carried on in writing. Oral criticism in Council by the Minister of Finance and oral replies by his colleagues are necessarily but imperfect methods for either attacking or defending proposals made.

(39) Arguments which may sound plausible in debate often lose much of their force when subjected to the kind of criticism which is only possible in the light of full information and accurate statements of fact. Pledges given in conversation are apt to be forgotten afterwards, and it is always desirable to keep on record statements of fact or arguments used in defence of particular points of policy.

(40) Correspondence will, of course, take time; but there must be great inconvenience in the present system under which the examination of all the estimates must be concentrated in the short period which elapses between the date when they are forwarded to the Department of Finance and the date at which they must be submitted to Parliament.

(41) Proposals for increased expenditure are probably being framed in the departments throughout the year; and it is not easy to see why they should not be submitted for the approval of the

Finance Department, as and when they are matured. This would relieve the pressure in the period immediately before the estimates are presented to Parliament, and would enable many of the proposals to be considered with due deliberation. Any sanction given in the course of the year would, of course, be provisional and subject to any modifications which might hereafter be found necessary when the final estimates for the ensuing year were under consideration.

(42) When the process of examination was completed the proposals for expenditure would be reviewed by the Minister of Finance; and those which were accepted by him need not be considered again; those to which he raised objections not accepted by his colleagues would be referred to the Cabinet for discussion by the whole body of Ministers. The Cabinet would thus be relieved of an immense amount of discussion on the details of the estimates which is necessary under the present system, and would have to deal only with those points on which there was an irreconcilable difference of opinion between the Minister of Finance and one of his colleagues.

(43) In at least one respect the existing financial system seems to me unnecessarily rigid. Under section 41 of the Consolidated Revenue and Audit Act the Auditor-General is directed to see that no payment of any public money is made for which there is no direct parliamentary appropriation, or which is in excess of any such appropriation.

(44) The result of this provision is that (except during the parliamentary recess when special powers are available to meet urgent and unforeseen expenditure) no money can be spent on any service not specially provided for in the estimates, nor can the sum provided for any service be exceeded.

(45) But it must occasionally happen, for example, that a public work for which specific provision has been made in the estimates, turns out in the course of the year not to be required, while some other work *eiusdem generis* proves to be urgently needed; or again, that the amount provided for a work turns out to be insufficient to complete it within the year, and the progress of the work has accordingly to be suspended until further supplies have been made available. I think it would be reasonable, so long as the total provision under the vote was not exceeded, that there should be some means of supplying these deficiencies; and that power might be given to the Minister of Finance on the application of a department to authorize expenditure of a like kind to that already provided for in the estimates; or to authorize expenditure on a specific service in excess of the provision made.

(46) But in both cases the power should be subject to the limitation that the total amount provided in the vote was not to be exceeded; and it should be clearly understood that the power was not to be used except in really urgent cases.

E. REPORT OF THE SPECIAL COMMITTEE OF THE SENATE ON
THE MACHINERY OF GOVERNMENT, 1919

(*Report*, pp. 5-20.)

The Senate,
Committee Room No. 70,
Wednesday, July 2, 1919.

The Special Committee of the Senate appointed to consider and report on the possibility of bettering the machinery of Government, beg leave to make their First Report, as follows:

1. Your Committee has not attempted, in considering the reference to them, to formulate any scheme of governmental administration which would be only of theoretical interest, but we confine ourselves to recommendations:

- (1) Which will involve as little change as possible in present procedure;
 - (2) In the main, to such proposals as are a development of principles of government, which have received the approval of Parliament;
 - (3) To such as will enhance Ministerial responsibility to Parliament;
 - (4) To those which will make easier Parliamentary control of Ministerial action, both as regards shaping and carrying out the policy which has received the approval of Parliament.
2. We have made use in our deliberations of the Murray Report on the Organization of the Public Service of Canada, 1912, and have considered reports made in the United Kingdom for the same purpose as that for which this Committee was formed. . . .

5. In our system, the shaping of policy, supervision of its execution and the executive functions of Government, are by Parliament entrusted to one body of men. The members of a Cabinet are in Canadian practice bound together politically by an unusually full-recognition of the principle of ministerial solidarity: for example, the relatively high degree of control of expenditure by the Imperial Treasury is in Canada exercised, not by the Minister of Finance, but by the submission of the proposals by the Minister interested to his colleagues in council. . . .

6. . . . We can, however, refer with advantage in this report to what has been said at Westminster on the Cabinet practice in that Parliament, which is a model to our own and all other similar bodies, which, moreover, with great respect for precedent, has modified from time to time its procedure according to current necessities.

We have no fear that, with due allowances for differences in conditions, what is stated about the Imperial Cabinet is not true of our own.

7. The peers on both sides who spoke in this debate in the main agreed that the Cabinet of twenty-two or three was cumbersome, that

the old methods of conducting business were poor, and that a new system would have to be devised. This is also the opinion of Lord Haldane's Committee, and this view of governmental functions seems implicit in Sir George Murray's report.

8. It seems desirable to draw attention to the possibility of confusion in language, as the working Privy Council, the Cabinet and the Ministry are in Canada the same persons. In the English reports and debates, the language implies that the Cabinet discharges functions as defined below, the duties of Ministers are executive, and Ministers as a body do not attend meetings of the Cabinet. This report follows the English use of these words and their derivatives.

9. The Lord Haldane report defines, and we agree, that the main functions of the Cabinet are:

The shaping of policy; the control of the executive, if that policy receives the sanction of Parliament; and the continuous co-ordination and delimitation in the activities of the various departments of Government.

Determination of policy or deliberation to reach the highest degree of fruitfulness requires:

- (1) A full and accurate knowledge of the subject, which will often require expert advice;
- (2) Time for consideration of the matter in all its bearings, so that divergence may be harmonized and a consensus of opinion obtained among those responsible for the course of action determined on;
- (3) That the deliberative body shall be small enough to take counsel effectively and yet large enough in the present condition of Canadian public opinion to give assurance that no important element in our national life was inadequately represented; and,
- (4) Such arrangement of public business that the time necessary for deliberation be not curtailed by the claims of other public duties.

10. Before considering various rearrangements of administrative work by which these ends may be attained, it is desirable to refer to certain considerations which seem to indicate that great care should be taken before any changes were made which would unduly hamper a Prime Minister, or so seriously alienate public and parliamentary sympathy, that the consequent hostility would imperil the successful working of the new procedure, and chill the loyalty of the supporters of an administration carrying on the business of the Dominion at a time when burdens are so heavy and problems so perplexing.

These considerations are:

- (1) Under our system of Government the Prime Minister is individually responsible for the colleagues he chooses and the assignment of their duties. It would follow that he should not be circumscribed by any rigid system in his freedom of action.

Moreover, political considerations which no Prime Minister could disregard might easily make it desirable for him to increase his colleagues to a number beyond what would be justified by any logical arrangement of ministerial duties.

- (2) That the freedom of selection which a Prime Minister can exercise in the choice of his colleagues is most seriously hampered by demands for Cabinet representation based on grounds of race, region, and religion. So uniformly ever since Confederation have these claims, not directly connected with sagacity in council or administrative skill, been recognized, that they have attained (particularly among Parliamentarians considering themselves of Cabinet rank) almost the force of a constitutional principle. Any marked change would excite a hostile disposition, before the good effects of a new system could become apparent.
- (3) That if the change involved a small Cabinet, undoubtedly, to be regarded as of superior rank to the Ministers, personal factors might prevent smooth working. These would arise from the natural desire of men of ministerial rank not to be placed in a position of inferiority to their colleagues, which has shown itself by the course of events in the past in Canada, where offices created as of a subaltern grade have been given ministerial rank, and secondly, the enhancement of this feeling on the part of individuals considered for these positions, by the fact that with few exceptions all of them are regarded, both within and without Parliament, as representatives of various districts and of elements in the community.

11. Such difficulties as these are, however, of a character which, as the necessities of the State for economical and effective administration become more widely apparent, would make them surmountable by a Prime Minister in whose intention and force to secure these ends Parliament had confidence.

12. During recent years the Canadian Cabinet proceeded no farther in development than the second stage of English change in procedure, viz., increase of the ministry and devolution of certain functions to committees of its own members, and to other committees and commissions, a method of administrative working abandoned as impractical in the United Kingdom. Note that Mr. Bonar Law and other gentlemen refused to join Mr. Lloyd George if he proposed to have a large Cabinet. It was followed there by a small deliberative Cabinet and a large number of Ministers. This has proved successful enough to be continued by the Prime Minister, Mr. Lloyd George, after the last general election.

13. We may anticipate later paragraphs in our report by stating here that projects we recommend will tend to minimize the public demand for local representation in the Ministry through providing for

it in another way (Par. 22), and by reducing the field in which local Cabinet representation is of much local importance.

14. If, on account of the considerations above stated, conditions in Canada would make inopportune the divisions of an administration into a Cabinet, a deliberative body without portfolios, and a Ministry charged with executive duties, the same considerations would in a distinctly lesser degree interfere with attaining the same end in another way, viz., by having a Cabinet, holding recognized offices of State, enabled to give their time to deliberation and supervision by an organization of departmental work which would make their ministerial duties purely supervisory. This course, however, presents few difficulties, for it would be entirely a matter of internal arrangement between the Prime Minister and his colleagues.

15. There is a third course, which we consider could be introduced with the least degree of disturbance, viz., to make the members of the administration as at present holders of portfolios, but reduce their number to say nine or not more than eleven, so that it would be a body not entirely too large for deliberation. By giving its members assistance in their Parliamentary duties, by definitely relegating to their deputies purely administrative departmental work, and by the devolution of certain ministerial duties, a devolution, it may be, theoretically unsound but practically advantageous, the members of a Ministry would have time for more important duties now often most seriously interfered with by these other claims on their time and energy.

Secretariat.

16. Whichever course may be adopted, it seems desirable that the administration should abandon, as has been abandoned in the United Kingdom, the long-established practice of keeping no record of Cabinet proceedings. It is not credible that such inconveniences have not arisen in Canada as Lord Curzon speaks of, when in the intimacy of his knowledge of Cabinet working in Britain he says, that there was no agenda; there was no order of business; that no record was kept of the proceedings; 'that a Minister went away and acted upon what he thought was a decision which subsequently turned out to be no decision at all or was repudiated by his colleagues', and that there was the utmost difficulty in securing decisions because the Cabinet was always congested with business. The proper carrying on of public business demands a proper organization which would include a staff to prepare for council meetings, expedite business at them, and promptly communicate the decisions in council to those concerned.

The foremost of the duties of the head of such a staff would be:

- (a) The keeping of such notes of Cabinet meetings as seemed desirable to its members.

- (b) To prepare for the approval of the Prime Minister the agenda of meetings.
- (c) The preparation and submission to the members of the Cabinet, in advance, of such information as may be necessary to the formation of opinion.
- (d) Communication to Ministers concerned of decisions of the Cabinet.
- (e) To act as liaison officer between the Cabinet and Ministerial committees of the Privy Council, as well as between departments.
- (f) and that he should arrange for and be present at the inter-departmental conferences to which we shall later refer.

17. We believe that, when the conduct of ministerial business is revised, one reform suggested by Sir George Murray (M. 18, 19, 20), i.e. that the passing of formal Orders in Council will be relegated to small committees of the Ministry specially summoned for this purpose, will be included. The Secretary of the Cabinet, if existing, would be the proper channel to keep the Cabinet and other Ministers informed of what was done at these meetings.

18. We are aware that we are proposing an establishment the head of which should be a man of high ability, attainments, and character. He should have the standing of a Deputy Minister and if the Parliament of Canada should prove to be more fearful of interfering with long-established practice than that of the United Kingdom there would be no constitutional difficulty in making this officer, for the time being, a member of the Privy Council. It may be pointed out also that a position among his assistants would afford the most admirable training for the highest positions in the Civil Service or for a Parliamentary career. . . .

21. The duties of a Minister are the shaping of departmental policy, securing the approval of his colleagues, and later of Parliament, the supervision of its execution, and its advocacy and defence in Parliament. As a political head he is bound to promote the interests of his party, a duty not likely to be overlooked, for the instinct of political self-preservation is as strongly developed in the political heads of a party as the ordinary form of this instinct in the citizen. The Minister is expected to check the bureaucratic rigidity of his subordinate officials, and of him is demanded a conduct of departmental affairs neither falling below nor too far in advance of what the public will accept as satisfactory administration. These duties, particularly in the more important departments, would leave inadequate time for deliberation and supervision.

22. We propose that time be made for these duties by the employment of Parliamentary Under-Secretaries as assistants to the Ministers. We conceive that their highest usefulness will be found by not

circumscribing their duties to occasional replies to a question in Parliament, but by making them active and indispensable forces in the working of the departments. They should assist the Minister in the formation of policy. They should relieve him of the greater part of interviews with the public, which now displays a tendency to bring the most trivial matters to the personal attention of the Minister. In short, a wise Minister would delegate to his Under-Secretary all the work the latter can do both within and without Parliament, not as little as possible. In this way and in this way alone can the Minister gain needed time. We think it probable that when the initial difficulties of changing any system have been overcome, that by enhancing the importance and prestige of his Under-Secretary, the Minister himself will gain in importance and prestige. The secretaries will also gain valuable training and those among them who display sound judgement and breadth of view will qualify for promotion to higher positions.

It may be pointed out that if Parliamentary Under-Secretaries of the right type be appointed with the scope of their duties as wide as we recommend, and if they receive from, as well as give to their Ministers loyal co-operation, the system will go far to secure better Government. It will also satisfy that claim for local representation in the administration in positions but one degree less important than those of the Ministers; a claim which has to be reckoned with by every Prime Minister.

The Divisions of Governmental Functions.

23. The principle on which governmental functions are classified in recent British reports on investigations similar to those of this Committee is *similarity of service* and not similarity of persons for whom that service is performed. This principle has been recognized by our Government in the recent installation of the Department of Health, which will discharge duties, *inter alia*, previously performed by practically all the departments which deal with the public. This Committee, accepting the principle, formulates as a basis for classification the following divisions of the functions of Government, not as exhaustive or applicable to all countries, but dealing only with those now exercised, or which may be exercised by the Government of the Dominion—and as the functions of a Cabinet have been previously dealt with, only the executive functions are included in this survey.

24. The functions of executive government may be divided into these classes:

I. *Basic*.—Those without the adequate performance of which the other duties of government could not be discharged.

These are:

Defence.—Naval and Military, and the maintenance of internal order.

Justice.—The administration of justice, without which an ordered society could not exist.

Finance.—The raising of a revenue to defray the expenses of the State, and supervision of the expenditure of that revenue in so far as that supervision is ministerial and not parliamentary.

II. Services to the public as a nation or as individuals.

These may be subdivided into Fiduciary, Regulative, and Productive.

Fiduciary. Those services wherein the Government acts as guardian for the nation of its public domain.

Public, Admiralty and Ordnance lands, Fisheries, Mines, &c., for groups and individuals;

Indian Affairs;

Depositors in Government Savings Banks;

Purchasers of Annuities, and if instituted in Canada, Unemployment Insurance and Old Age Pensions.

Regulative: are those functions concerned with the definition of powers, and supervision of the exercise of those powers conferred on corporations, and the restriction (in the public interest) of the freedom of the individual or association.

These are:

- (a) The control of Banking, Insurance, and other Joint Stock companies.
- (b) The control of rates and services by Railway, Telegraph and Telephone and Express companies, and of their mutual relations.
- (c) Patent rights, copyright.
- (d) The supervision of occupations and equipment which affect the safety and convenience of the public, such as navigation—the officers, pilots of vessels, engineers, and of vessels and their equipment.
- (e) Standardization and inspection: Grain, Gas and Electricity, Weights and Measures.

Productive.—Those functions which tend to increase the number, the social well-being, and the economic efficiency of the people:

Health;

Immigration;

Labour;

Trade and commerce;

Agriculture;

Communications and transport, including post office, railways, canals, steamship services and subsidies, waterways.

III. External Affairs.—Relations with other nations.

IV. *Auxiliary Services.*—Those not directly for service to the public, but serving to enhance the effectiveness of the foregoing.

- Legal advice;
- Research and information;
- Manufacturing and constructive, e.g., printing, public works;
- Records;
- Archives;
- Statistics.

25. If the status of a Minister be considered as that of a political head as before defined, and retrospection will show that technical knowledge or training has not been always considered necessary for the holding of a portfolio, we consider that the present Cabinet of twenty (two without portfolios, and two in their nature temporary, the Minister of Overseas Forces, and second, although this department will be for some years useful, the Ministry of Civil Re-establishment) could be reduced.

26. In Appendix III are statements showing the arrangements of ministerial functions, in the United Kingdom, other Dominions and certain foreign countries. Canada it will be seen has the highest number of ministers of any of these countries with the exception of Great Britain, although most of these Governments have administrative duties such as Colonies and Education which are not discharged by the Dominion Government.

27. We suggest tentatively the following composition of a Cabinet:

- I. Prime Minister, President of the Council, Minister of External Affairs.
- II. Secretary of State.
- III. Justice.
- IV. Finance (including Customs and Internal Revenue).
- V. Interior (including Immigration and Colonization).
- VI. Ministry Defence.
- VII. Communication and Transport, now Railways and Canals, Marine, and Post Office.
- VIII. Production and Distribution (including Trade and Commerce, Fisheries and Agriculture).
- IX. Labour.
- X. Public Works.

It seems to provide for all the administrative duty of Government; to be not hopelessly too large for deliberation, and with a proper systematization of public business to give promise of an improvement on the present system.

28. It may be noted that in Great Britain the Haldane report reduces the great Departments of Government to ten. It does not necessarily follow, the report goes on, that there would be only one Minister for each of these branches.

29. We point out that the *effective* Ministry, namely the Ministers and the Parliamentary Under-Secretaries (for several portfolios such as Finance, Defence, Public Works, and Production will require more than one Under-Secretary), will not in number or expense fall below the present Cabinet establishment. The advantage, however, in the more efficient carrying on of public business will more than offset these disadvantages. What is produced by outlay is as essential an element as the amount of the outlay in estimating the desirability of any scheme.

The Delegation of Functions.

30. It has been the practice of all Cabinets to delegate, with the consent of Parliament, certain of their duties to committees of their own Members and to other Committees or Commissions. Of the latter there are two classes, outside temporary organizations for temporary ends. The first, organizations which demand from their members the exercise of such quasi-judicial functions which could not be expected from Ministers engrossed by other affairs and constantly subjected to criticism, often virulent, not only of their actions but of their motives. The second class are such bodies as consist of members having special qualifications for dealing with the matters entrusted to them, willing to serve the State in an independent position, but not willing to take the status of departmental officers. Both these classes of organizations have the very great advantage that their decisions and actions carry weight with the public, in the ratio that the public believes that they are uninfluenced by party considerations. This public acceptance would not be given as freely to the actions of the same individuals if they were subordinates of a Minister.

It was the recognition of these considerations which led to the Auditor-General being made an officer of Parliament, not of the Department of Finance; also, for example, to the establishment of the Railway Commission rather than a committee of officials of the Department of Railways and Canals dealing with the same matters....

.

Individual Ministerial Responsibility.

54. The doctrine of the solidarity of the Cabinet on all questions of policy is well established. It has been questioned, however, whether that joint ministerial responsibility should extend to the executive actions of a Minister, the course he takes in carrying out the policy which has been sanctioned by his colleagues; these reasons are given for this view. It is not humanly possible for a Cabinet to examine adequately the proposals of each executive member:

Nor with the congestion of business in the Privy Council, is it reasonable to hold that the sanction of an Order in Council approving

the action of a Minister, is enough to make his colleagues as a body responsible for the Minister's actions.

We therefore point out as worthy of consideration the advantage of a change by which a Minister should be responsible for his administrative acts, even if those acts have in Council received a sanction which in the nature of things could not be other than formal. When they had been seriously discussed it would still be possible for the Government as a whole to accept responsibility. Such a change to be practical must be pointed out, (*sic*) would be a change in spirit—'in fact and in custom'—which would leave Parliament free to vote on the strict merits of administrative acts, uncomplicated by any wider issue.

55. This course would heighten the responsibility of the Minister, and strengthen his position in resisting pressure, by establishing a personal and direct for a diluted responsibility. It would also make it easier for a Prime Minister to replace a colleague who does not hold the confidence of Parliament. We may point out that this principle of Cabinet responsibility for policy, individual ministerial responsibility for execution, is established in the Constitution of the French Republic.

Research and Information.

56. It will be seen by reference to the tabulation of executive functions comparing those of Canada and the United States (Appen. IV) that the Dominion is relatively not inadequately supplied with organizations for the collection of information.

57. It does not seem necessary to dwell on the need of a country which is to hold a high position, to fortify itself for the task by a provision of agencies, first for the solution of problems which underlie sound legislation and administrative regulations; and second, of those fundamental economic or industrial problems, which will make more thorough or more immediately available for exploitation the natural resources of the country.

So much impressed is the Haldane Committee with this necessity, that it places Research and Information among the ten main functions of Government and gives a long chapter (IV) to the details of this subject.

It is not within the province of this Committee to suggest at the present time the proper organization of this service.

58. We desire, however, to point out that there is necessity for some agency which could collect, collate, and keep available for inquirers, information now dispersed and only to be found by prolonged search. (e.g. Documents dealing with public affairs in Great Britain seem to come more regularly to the Department of External Affairs, than to the Library of Parliament.)

59. Physical conditions make it impossible at present to consider

the establishment of this service in its natural place, the Library of Parliament. We recommend the inauguration of this central service of collection and collation as soon as practicable. It would not require that all books and documents should be gathered under one roof, but only at one place; the inquirer could ascertain promptly the information which exists on any particular subject and where such information could be obtained.

60. In conclusion, we reiterate our opinion that the difficulties which confront the country can be most easily surmounted by an arrangement of governmental machinery which

Will give a Cabinet time for mature deliberation and supervision of the executive;

Will make Parliamentary control real and not formal;

Will secure full and accurate information as a basis for the decisions of the Government and of Parliament;

And such modification in the practice of Parliament as will secure the consideration of ministerial proposals and ministerial administration other than questions of policy, each on its individual merits, and not bound up with the issues of party success.

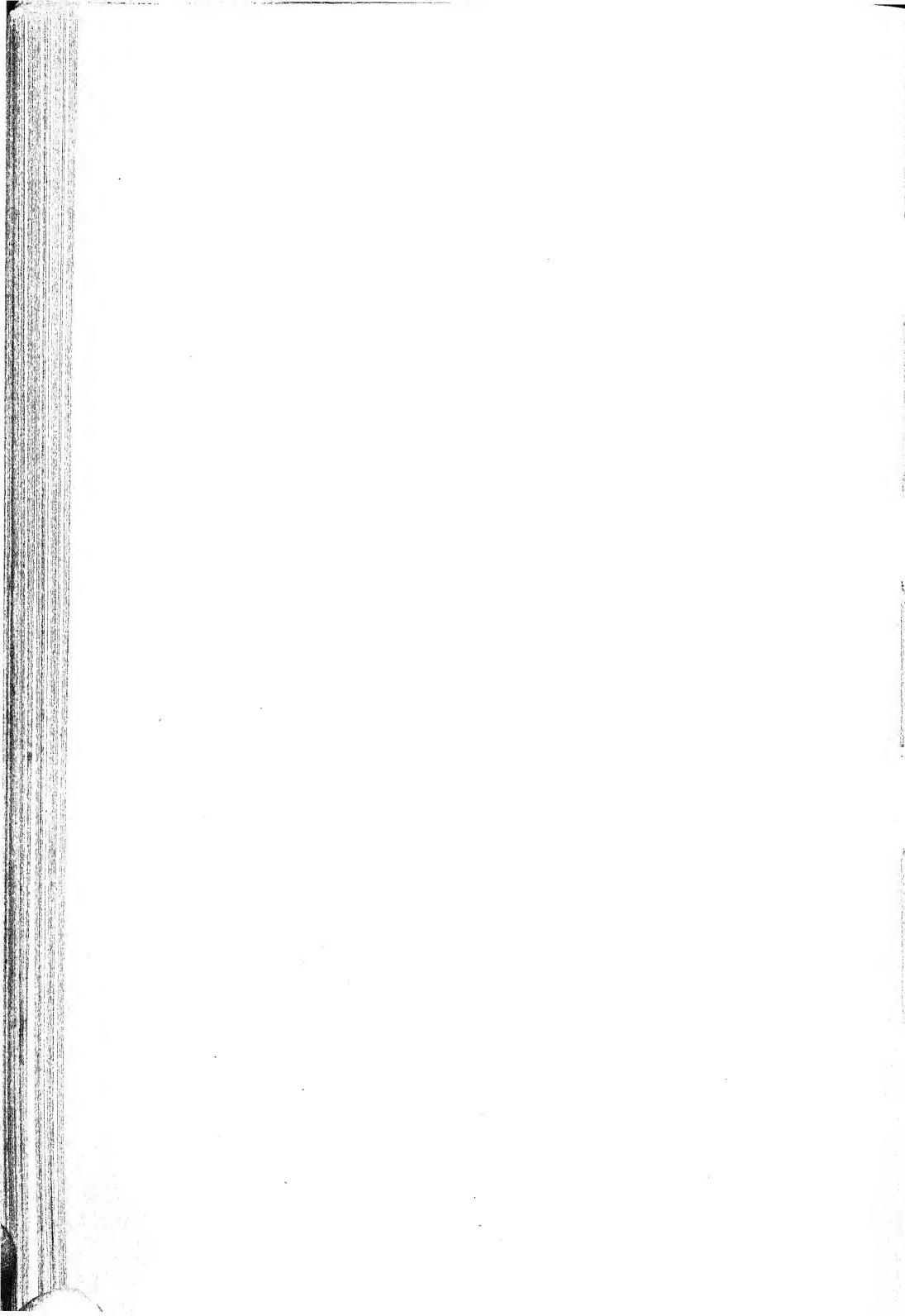
61. The satisfactory working of boards and commissions to which has been entrusted functions which under less difficult conditions were discharged by the Ministry, such as the Railway and the Purchasing Boards, the International Joint Commission, the Grain Board, and others, gives us confidence in recommending the establishment of the two boards we suggest. We do not doubt that others may be found necessary.

62. With reference to the possibility that any Government discharging the heavy responsibilities of such times as these, may be hampered by an indisposition to accept changes in current practice, we say, that in many important respects great changes have occurred and been accepted, and that the changes which will be brought about in the Parliamentary sphere by the transfer of appointments to the Civil Service Commission, by the substitution of the Purchasing Board for departmental buying, by the results of the two boards we propose, will tend to make acceptable the modifications of present practice which we have suggested.

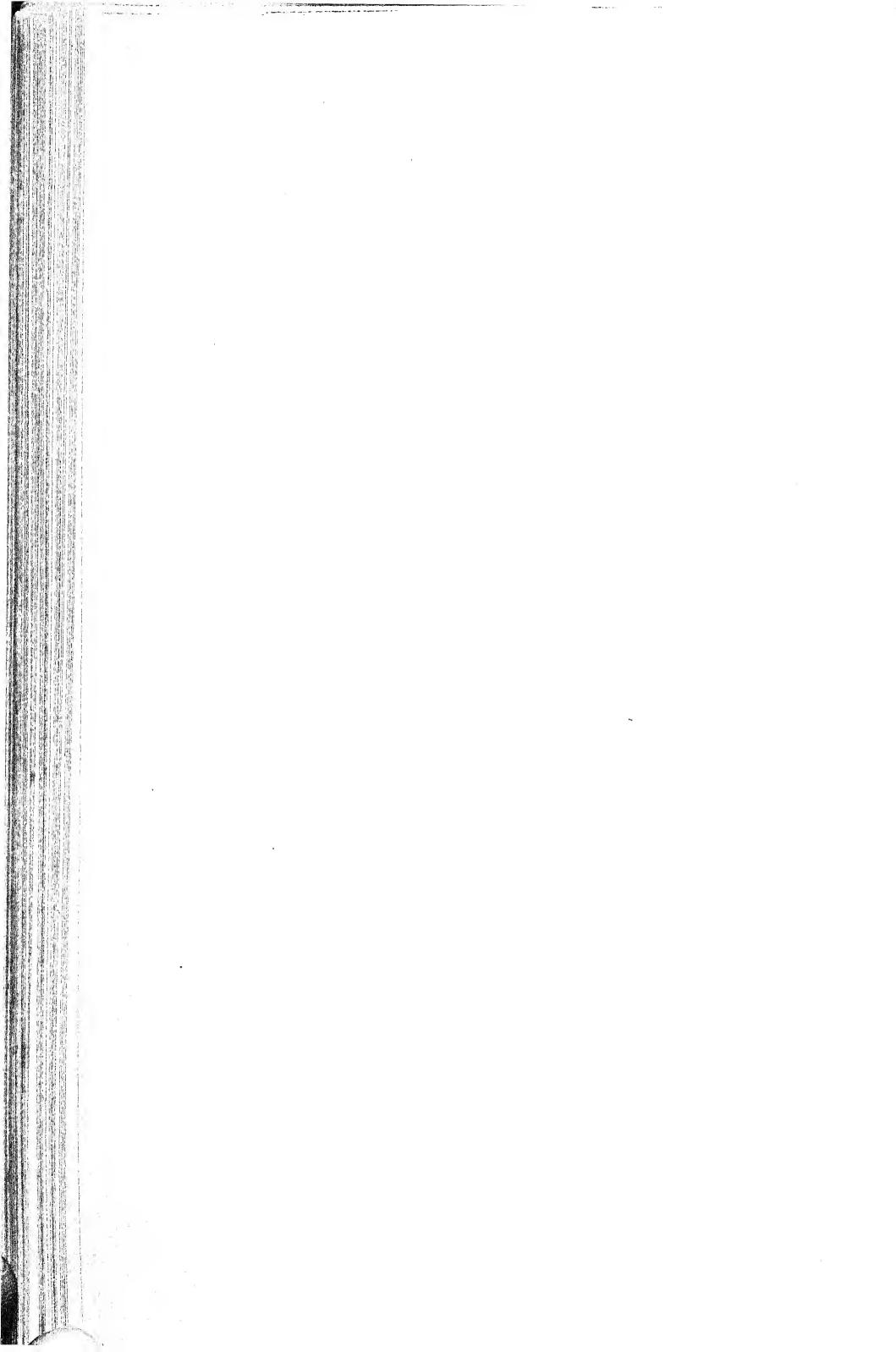
63. Your Committee recommend that fifteen hundred copies of the foregoing report and appendices be printed in pamphlet form for public distribution, and that Rule 100 be suspended in so far as it relates to the said printing.

All which is respectfully submitted.

J. S. MCLENNAN,
Chairman.



CHAPTER FOUR
THE HOUSE OF COMMONS



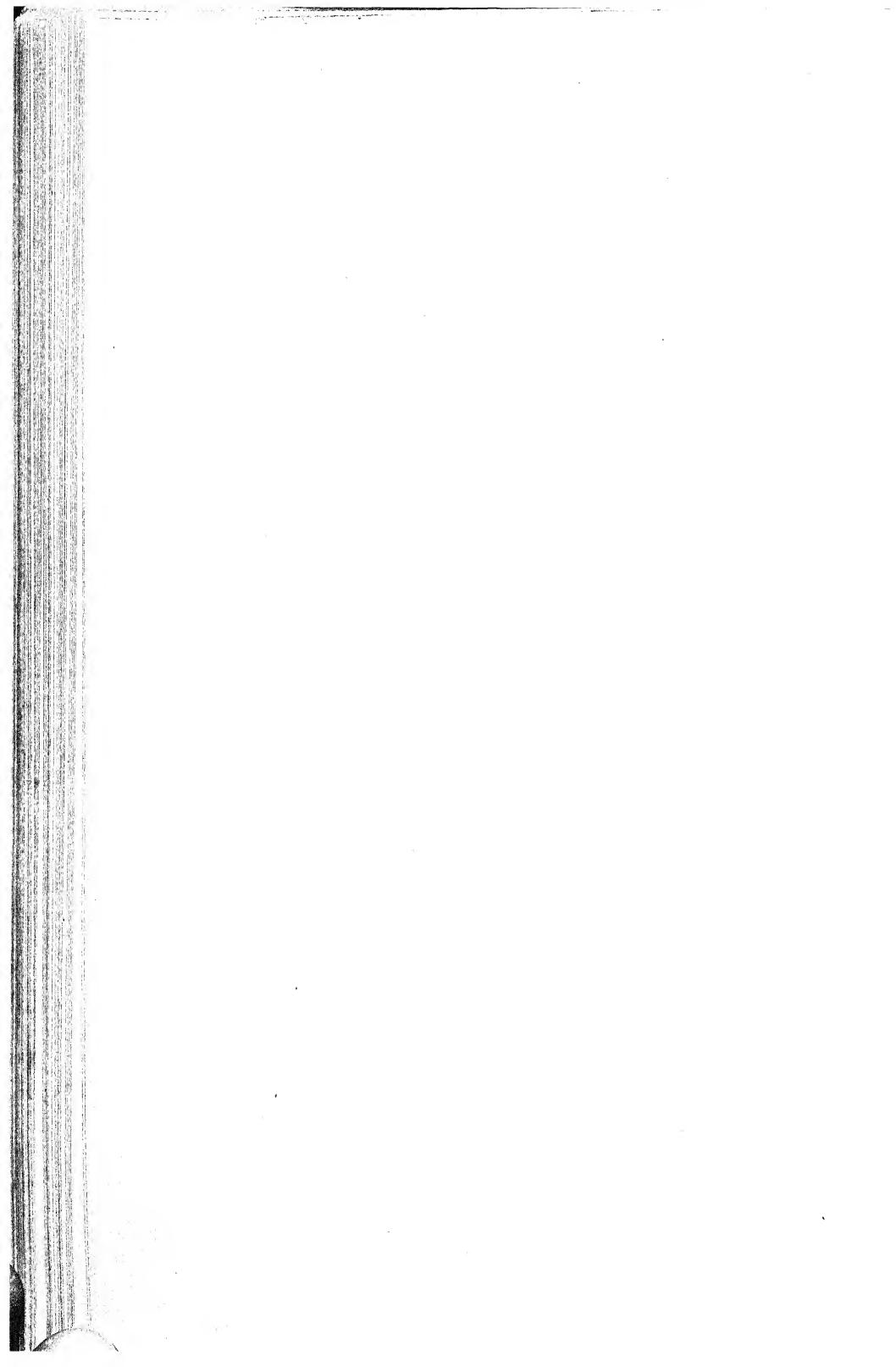
THE HOUSE OF COMMONS

'I don't think they play at all fairly,' Alice began in rather a complaining tone, 'and they all quarrel so dreadfully one can't hear oneself speak—and they don't seem to have any rules in particular: at least, if there are, nobody attends to them.'

Alice's Adventures in Wonderland.

THE House of Commons is, of course, the supreme political agency in the Dominion Government; it controls, in the last resort, all branches—legislative, executive, administrative, and judicial. The powers which it exercises under the British North America Act, as well as those which it has assumed on other authority, are derived from its unquestioned pre-eminence as the agent of the Canadian people. It is thus primarily a representative body, and its problems in the last thirty years have been directly or indirectly concerned with the effort to secure an adequate expression of public opinion. Section I, therefore, deals with the mechanism of securing representation—the apportionment of members by provinces, and the relation which exists, or should exist, between a member and his constituents. Section II deals with the attempted perversions of representation—the wholesale bribery of voters, election frauds, and the raising and spending of campaign funds.

Sections III and IV relate to a different part of the subject, viz. the manner in which the elected representative body does its work. The adoption of the closure in 1913 was a notable departure in Canadian legislative procedure, but there is a growing conviction to-day that even the closure, the twenty-minute rule, and other labour-saving devices are now inadequate to cope with the increasing pressure of parliamentary business. The organization of the House into political parties has been somewhat complicated and confused since the War by the appearance of a large, intelligent, and active third party, which proved unable, however, to remain united after a few years of parliamentary experience.



I

REPRESENTATION

A. ADJUSTMENT OF REPRESENTATION

I. MEMORANDUM ON REPRESENTATION OF THE MARITIME PROVINCES

(Canadian Sessional Papers, 1914, No. 118a, pp. 1-3.)

Nova Scotia and New Brunswick were two of the charter members of confederation. Prince Edward Island joined the Union in 1873 under the provisions of section 146 of the British North America Act.

The following table shows the representation allowed these provinces from time to time, and the effect of applying the same principle to the last census:

	<i>Original Number</i>	<i>After census of 1881</i>	<i>After census of 1891</i>	<i>After census of 1901</i>	<i>After census of 1911</i>
Nova Scotia . . .	19	21	20	18	16
New Brunswick . . .	15	16	14	13	11
Prince Edward Island	6	6	5	4	3

The question of the legal right of New Brunswick and Prince Edward Island to retain their original representation was referred to the Supreme Court of Canada in 1903, and was decided against these provinces. On appeal to the Privy Council, the answer of the Supreme Court to the question submitted was held to be correct.

We must bow to this decision so far as the strict interpretation of the written contract is concerned, but this was not the expectation and belief of the delegates at the time of the negotiation of the terms of Union, for the Hon. George Brown in moving the resolution fixing the number of representatives which each colony should have in the House, stated: 'The practical result will be that while Lower Canada certainly will not be less and the lower provinces may increase in population, they cannot decrease in the number of representatives. It keeps the House within a reasonable limit.' And the Hon. A. T. Galt, in a speech delivered in Sherbrooke on November 23, 1864, shortly after the termination of the Quebec Conference, and reported in the Montreal *Gazette* of that time, declared: 'The House would never have less than one hundred and ninety-four members.'

Representation by population while accepted as a guiding principle in fixing the representation of each province in the Dominion Parliament, was intended to be made subservient to the right of each colony to *adequate* representation in view of its surrender of a large measure of self-government. In consideration of surrendering its independent colonial status, each colony was entitled to such a representation in the federal Parliament as would be sufficient to guard that right.

A self-governing colony was something more than the number of its inhabitants.

The principle that population was not the sole consideration in fixing representation was recognized in the cases of Manitoba, British Columbia, and Prince Edward Island when these provinces respectively entered the Union.

Manitoba with a population less than one unit of representation was given four, with a provision that after the census of 1881 its representation should be 'readjusted' under the terms of the British North America Act.

The census of 1881 showed a population of 62,260, which would have entitled it to three members, but it was 'readjusted' up to five.

British Columbia, with a white population of less than 10,000, and a total population not exceeding 40,000 when it entered confederation, in 1871, was given six members as an irreducible medium [*sic*]. In 1881 it had but two units of representation, and in 1891 four units.

Prince Edward Island obtained six members upon entering confederation with but five units of population, passed the census of 1881 in the same condition but, not being safeguarded as was British Columbia, was reduced to a representation of five after the census of 1891.

It may be said that in each of these cases there was the expectation of such increase as would in time bring all the provinces upon the basis of representation allowed upon entering confederation. Admitting such to be the case, it goes to show that the splendid optimists who made confederation thought only of readjustment upwards and not downwards.

When the Maritime Provinces entered confederation it was impossible for them to have foreseen the extent and effect of the development of Western Canada. They never imagined that in the days to come the growth of the west would strip them of their influence in the councils of the nation. Though the times were not over-prosperous they contributed their share to the cost of purchasing the lands from the Hudson's Bay Company and equipping them for settlement; bore their part of the cost to Canada of the Canadian Pacific Railway and all the other vast expenditures that went to link together the far-flung provinces of Canada, and to convert the wilderness into thriving communities out of which have developed the splendid prairie provinces of to-day.

But most of all, they gave their sons and daughters to the west. From Manitoba to the Pacific coast the Maritime Provinces people form an important element of the population who have played no small part in the development of these new lands.

Theirs also is a potent influence in binding together the east and west with bonds of sympathy 'light as air though strong as iron'.

All these contributions the Maritime Provinces have cheerfully

made in the interests of Canadian unity and progress, but they feel it a cruel exaction of the strict letter of the bond which will impose a lasting penalty upon them for the sacrifices they have made in such a cause.

Another ground upon which the Maritime Provinces claim consideration in respect of their representation is that they had as good a right to share in the public demesne of Canada as had those provinces upon which it was bestowed. It is true that the Maritime Provinces have claimed a share of the value of these lands, but that does not touch the question now under consideration. The territories added out of the public demesne will increase to a limit not now possible of calculation the representation of these provinces in the federal Parliament.

The Maritime Provinces, situate as they are, could not well obtain their share in actual territory, but it is surely just that they should not by reason of the aggrandizement of the provinces more favourably situate be compelled to accept a representation decreased not only relatively but absolutely in the Canadian Parliament.

There is surely something wrong with a system of representation which penalizes some provinces for the sacrifices they have made in sending their children and their means to upbuild the other parts of the Dominion, and which would fail to make any special allowance in their representation in the Canadian Parliament in respect of their isolated position which prevents them from enlarging their bounds out of the public lands of Canada.

Prior to the Act of 1912 the representation of Quebec was fixed at 65, but now in the added territory additional representation will be given under the terms of the British North America Act. This may be few or many, but it introduces in that province the same principle now contended for.

This is the status of British Columbia as well, and it is submitted that each province in the confederation might well be placed upon the basis of a fixed minimum of representation.

For the reasons above set forth, it is claimed that the representation of the Maritime Provinces in the House of Commons should be restored to the number allowed upon entering confederation upon terms that the same may not in future be subject to reduction below that number.

Dated at Ottawa, this 27th day of October, A.D. 1913.

2. THE DECENTNIAL REDISTRIBUTION

((a) *Canadian House of Commons Debates*, February 13, 1923, pp. 250-3.)

Mr. MACKENZIE KING (Prime Minister): Mr. Speaker, I rise to introduce a measure to effect a readjustment of the membership of

the House of Commons. In doing so, I need not remind hon. members that the Government is not exercising any discretionary right, but is rather performing a constitutional duty which is imposed upon it. Under our Constitution, the redistribution of the membership of the House of Commons must be made after each decennial census. There have been, since confederation, several redistributions. The first was made in 1872, the next in 1882, the next in 1892, the next in 1903, and the last redistribution was made in 1914. There have been in the interval partial redistributions for the purpose of providing for representation of territory and provinces which were not in the Dominion when confederation was originally formed. There was a partial redistribution in 1871, to give Manitoba representation, and a partial redistribution in 1887, to provide for representation of the North-west Territories. There was a partial redistribution in 1907 to provide for representation of the provinces of Saskatchewan and Alberta, which were subsequently formed out of the North-west Territories. In 1915 an amendment was passed to the British North America Act, relating more particularly to the province of Prince Edward Island. It was in the nature of a partial redistribution affecting that province, and added to the British North America Act as section 51a thereof the following provision:

Notwithstanding anything in this Act, a province shall always be entitled to a number of members in the House of Commons not less than the number of senators representing such province.

By section 1, subsection (1), paragraph (ii) of the Act to amend the British North America Act, 1867, being 5-6 George V, Chapter 45, the representation of Prince Edward Island in the Senate was fixed at four members. The census prior to that partial redistribution would have affected the representation of Prince Edward Island to the extent of the loss of one member, but for this amendment to the Act, which provided that no province shall have in the House a smaller representation than it has in the Senate.

Another partial redistribution was made to give the Yukon Territory representation in the House of Commons. The Yukon Territory obtained its right to representation under the Act known as the Yukon Territory Representation Act, 1902, assented to on the 15th May of that year. The clause that relates to this matter reads:

The Yukon Territory, as that territory is defined and constituted by section 13 of, and the schedule to, chapter 41 of the statutes of 1901, shall be an electoral district and shall return one member to the House of Commons of Canada.

The Yukon Territory received its representation under the redistribution of 1903....

I think it will be of interest to hon. members, in connexion with the redistribution we are about to make, were I to incorporate in my

remarks a statement showing the representation of the various provinces in this House of Commons after the several redistributions that have taken place:

General and Partial Redistribution of Federal Constituencies.

Year	No. of Constitu- encies	Ont.	Que.	N.S.	N.B.	Man.	B.C.	P.E.I.	N.W.T.	Yukon
1867	181	82	65	19	15	..	..	..	..	..
*1871	185	82	65	19	15	4	..	..	..	..
†1872	200	88	65	21	16	4	6	..	..	..
†1882	211	92	65	21	16	5	6	6	..	..
*1887	215	92	65	21	16	5	6	6	4	..
†1892	213	92	65	20	14	7	6	5	4	..
†1903	214	86	65	18	13	10	7	4	10	1
									Sask.	Alta.
									10	7
									16	12
									16	12

* Partial Redistribution.

† General Redistribution.

(N.B. Certain errors which occur in the Report have been corrected above.)

May I say a word now with respect to the application of the recent census to the redistribution about to be effected. First of all I would point out that the Quebec Boundaries Extension Act, which was passed in 1912 and which enlarged the boundaries of the province of Quebec, contained a provision under which the population of the additional territory brought into the province was not to be counted, for the purposes of redistribution, as part of the population of the province of Quebec in determining the unit of representation in accordance with the provisions of the British North America Act on that point. The Quebec Boundaries Act contains the following section:

That the population of the territory hereby added to the province of Quebec shall be excluded in ascertaining the population of the said province for the purposes of any readjustment of representation of the other provinces consequent upon any census.

Account of this provision must necessarily be taken in determining the unit of representation according to the census. The population of the province of Quebec—exclusive of the area added by the Quebec Boundaries Act of 1912—enumerated in the sixth census, June 1, 1921, numbered 2,358,412, which, divided by 65, gives a unit of representation of 36,283; the unit was 30,819 in 1911. The quotient obtained by dividing the population of each province, except Prince Edward Island, as shown at the date of the census, by the unit 36,283 indicates, except where section 51, subsection 4, of the British North

America Act applies, the number of members to which each province is entitled. The result is as follows. I shall give for sake of comparison the figures of the redistribution effected after the census of 1911 as well as the figures of the 1911 census, and the figures of the redistribution to be effected under the last census, that of 1921, and the census figures themselves. The House will kindly bear with me while I put these figures on record:

Province	Census 1911 (Unit 30,819).			Census 1921 (Unit 36,283).		
	Population	Quotient based on unit	Actual Representation	Population	Quotient based on unit	Actual Representation
Prince Edward Is.	93,728	3·04	4	88,615	2·44	4
Nova Scotia	492,338	15·95	16	523,837	14·44	14
New Brunswick	351,889	11·40	11	387,876	10·69	11
Ontario	2,527,292	81·90	82	2,933,662	80·86	82
Manitoba	461,394	14·95	15	610,118	16·82	17
Saskatchewan	492,432	15·96	16	757,510	20·88	21
Alberta	374,295	12·13	12	588,454	16·22	16
British Columbia	392,480	12·72	13	524,582	14·46	14
Quebec	2,005,776	65·00	65	2,358,412	65·00	65
Yukon	8,512	..	1	4,157	..	1

Mr. MEIGHEN: Did not the Prime Minister make a mistake? Has not Ontario 81 members instead of 82?

Mr. MACKENZIE KING: My right hon. friend is misinformed; I am quoting figures given by the Dominion Statistician.

Mr. MEIGHEN: My right hon. friend gave the unit as 80·86 and the actual representation as 82. Should it not be 81?

Mr. MACKENZIE KING: My right hon. friend is forgetting the sections of the British North America Act which bear particularly on the proportion of reduction in population of each province relative to the total population of the Dominion as between the census figures of 1921 and 1911.

Mr. MEIGHEN: That is right. That is the 120th section.

Mr. MACKENZIE KING: Yes, I shall refer to it in a moment.

Now I come to the point to which my right hon. friend referred a moment ago. Before there can be any reduction in the representation of any province the provisions of section 51, subsection 4, of the British North America Act have to be considered. Let me repeat the subsection. It is somewhat involved, but I think its meaning perhaps will become clear if I afterwards express it in different words. This is the subsection:

On any such readjustment the number of members for a province shall not be reduced unless the proportion which the number of the population of the province bore to the number of the aggregate population of Canada at the then last preceding readjustment of the number of members for the province is ascertained at the then latest census to be diminished by one-twentieth part or upwards.

In other words, the proportion of the population of the province to the aggregate population of the Dominion must fall below one-twentieth less than the proportion of the population of the province to the aggregate population of the Dominion at the last preceding census before a reduction in the representation of that province can result.

The application of these provisions to Ontario and Nova Scotia is shown by the following table:

The proportion which the population of each province bears to the total population of Canada:

Ontario: according to the census of	{	1911 . . . 0.35069
		1921 . . . 0.33380
Nova Scotia: according to the census of	{	1911 . . . 0.06831
		1921 . . . 0.05960

That is a decrease in proportion from 1911 to 1921 in the case of Ontario of 0.01689; in the case of Nova Scotia of 0.00871.

The ratio of decrease in population from 1911 to 1921 in proportion to 1911 in the case of Ontario was 0.0481, which it will be observed is a little below the one-twentieth mark, 0.05. Nova Scotia is 0.1275, which unfortunately is just above the one-twentieth proportion. In the case of Ontario the proportion is less, in the case of Nova Scotia it is greater than the one-twentieth to which the Act refers.

These figures show that under the provisions of section 51, subsection 4, of the British North America Act, no reduction should take place in the representation of Ontario, because the proportion which the number of the population of the province bore to the number of the aggregate population of Canada, based on the census of 1911, is ascertained at the census of 1921 to be diminished by less than one-twentieth part. The proportion for Nova Scotia, having diminished by more than one-twentieth part, the provisions of subsection 4 of section 51 do not apply, and the representation of that province must therefore be reduced in accordance with the provisions of subsections 2 and 3 of section 51.

May I in brief form give to the House the net result of the effect of the census upon the redistribution as it will be under the legislation of this year as compared with the legislation of 1914. The unit of representation, as I have already mentioned, this year is 36,283 as against 30,819 in 1914. The total membership of the House of Commons will hereafter during the next ten years be 245 as against 235 during the past ten years, or an increase, in all, of ten members.

I come now to the method whereby the Government proposes to effect the redistribution of the various constituencies or electoral districts under the measure which is being introduced. Prior to 1903 the Government of the day in introducing a redistribution Bill

brought down a measure which it had previously prepared in a complete form. The measure outlined the electoral districts as the Government of the day had prepared them in advance. The Bill was submitted to the House in that form, and as all who are familiar with Canadian political history will recall, the redistributions effected in that manner gave rise to perhaps the bitterest controversies which have taken place in this Chamber and in our public life. Too often those redistributions suggested an element of unfairness, and endeavour on the part of the Government of the day to profit at the expense of its political opponents in virtue of the power that it possessed.

In 1903, under the administration of the Right Hon. Sir Wilfrid Laurier, a new principle was adopted. Sir Wilfrid brought into the House not a Bill which contained the boundaries of all the constituencies as originally drafted by the Government itself, but a Bill which set forth the number of members to which each province under the redistribution was entitled, leaving blank for subsequent determination the delimitations or definitions of the several constituencies to be represented. Sir Wilfred proposed when in power what he had suggested when in opposition. He maintained that in seeking to effect a redistribution, a larger measure of satisfaction in the House and greater confidence throughout the country would result if the Government invited the Opposition to join with it in a committee to work out the details of redistribution. The hope was expressed that the conferences in the committee room would be carried out in such a spirit of fair play and goodwill that the Bill could be brought back to the House of Commons and passed without contention or dispute. The adoption of that principle by Sir Wilfrid Laurier in 1903 had beneficial results, so much so that when the Government of the Right Hon. Sir Robert Borden had occasion in 1914 to introduce a redistribution measure, Sir Robert followed the principle that Sir Wilfrid had adopted and invited the opposition to name members on a committee to join with the Government members in determining the boundaries of the constituencies which were to be arranged under the redistribution. We propose to follow the example set by Sir Wilfrid Laurier and later followed by Sir Robert Borden, and I think in doing so we shall meet what my right hon. friend the Leader of the Opposition (Mr. Meighen), when speaking on the Address, said he hoped the Government would do, namely, have the details of the redistribution measure worked out by a joint committee of hon. members of this House. . . .

((b) *Canadian House of Commons Debates*, March 25, 1924, pp. 660-4;
July 15, 1924, pp. 4531-6.)

March 25, 1924. Mr. W. L. MACKENZIE KING (Prime Minister): In this connexion, I think it is well that we should make clear the lines on which we would expect the committee (on redistribution)

to proceed. There are guiding principles which have been observed in the past and which, experience would seem to indicate, it is advisable should be strictly adhered to. The first of these is the principle of following county municipal organization as a basis in whatever may be done in arranging the constituencies. There are obvious reasons why this should be a guiding principle. The municipal organization is the basis of our entire judicial system, of our municipal system, and by holding to the county unit, municipal organization, we are following a basis that is familiar to citizens of the country generally. It might be of interest to the House for me to quote briefly a word or two from former political leaders in this House as to the particular motive which they have had in advocating that this principle be followed. It was first asserted by the Right Hon. Sir John A. Macdonald in 1872, at the time of the redistribution of that year. I have copied from Hansard of June 1 of that year—page 928—the remarks of Sir John A. Macdonald at the time, and they are almost as applicable at the moment as they were in 1872:

It is desired, as much as possible, to keep the representation within the country so that each county that is a municipality of Ontario should be represented, and if it becomes large enough, that it should be divided into ridings—that principle is carried out in the suggestions I am about to make. It is obvious that there is a great advantage in having the counties elect men whom they know. Our municipal system gives an admirable opportunity to constituencies to select men for their deserts. We all know the process which happily goes on in western Canada. A young man in a county commences his public life by being elected, by the neighbours who know him, to the township council. If he shows himself possessed of administrative ability he is made reeve or deputy reeve of the county. He becomes a member of the county council, and as his experience increases and his character and abilities become known, he is selected by his people as their representative in parliament. It is, I think, a grand system that the people of Canada should have the opportunity of choosing for political promotion the men in whom they have most confidence and of whose abilities they are fully assured. All that great advantage is lost by cutting off a portion of two several counties and adding them together for electoral purposes only. Those portions so cut off have no common interest; they do not meet together, and they have no common feeling except that once in five years they go to the polls in their own township to vote for a man who may be known in one section and not in another. This tends towards the introduction and development of the American system of caucuses, by which wire-pullers take adventurers for their political ability only, and not from any personal respect for them. So that, as much as possible, from any point of view, it is advisable that counties should refuse men whom they do not know, and when the representation is increased it should be by sub-dividing the counties into ridings.

That, Mr. Speaker, is, I think, good, sound doctrine. Unfortunately, although it was enunciated by Sir John Macdonald, his Government, I am afraid, did not always act in accordance with it.

They departed so much from the principle that it became necessary later to get back to the principle originally intended, and in 1899 a Bill was introduced in this House by Sir Wilfrid Laurier for a partial redistribution, or in other words a redistribution to undo the wrongs that had been perpetrated on the electors of Canada in 1882 and in 1892. In bringing in that measure Sir Wilfrid Laurier enunciated the same principle, in the following words:

I may say at once that the object we have in view in presenting this Bill is not to make a total redistribution of the electoral districts under which the House of Commons is now constituted. We deem that it would not be expedient at this time to do more than undo, so far as we can, the most glaring violations of a principle which we have always held, and which has always been universally held by public opinion in this country, to be the fundamental principle of representation. We think it is a principle which will commend itself universally to public opinion, that the basis of representation in this House should be the municipal county organization. It is in the recollection of all the members of this House that this principle was to a large extent interfered with by the Redistribution Act of 1882. That Act was a violation of the principle which had prevailed up to that time, and had been maintained not alone by the Liberal party, but by the Conservative party as well. There are many well-known reasons why the municipal county organization should be preserved as the basis of representation.

It is upon that basis we shall expect the committee to whom the present Bill will be referred to proceed.

There is another principle which has been followed in previous redistributions, recognized by all Governments from the time of confederation down to the present, and that is that, as respects the unit of representation, the unit for the urban constituencies should be larger than the unit for rural constituencies. The reason of that must, I think, be apparent; indeed, there are several reasons, the most obvious of which I shall mention. In the first place, the people in rural areas are scattered over a very much larger area. It is not possible in a widely scattered community to organize public opinion as readily as it can be organized in more thickly settled parts. Moreover, in the urban centres there are recognized organizations ready to hand, for the purpose of focusing public opinion at any particular moment. For example, there are boards of trade that exist in the cities, and such institutions as the modern clubs and associations of business men which we have to-day. Again, the press of the cities is a much more potent, or, at least, is a more constant, factor than the press of the rural communities; it has a power of influencing public opinion and of keeping the urban point of view continuously before the people of the country. Further, it is I think a recognized fact that many rural constituencies are represented in Parliament by members who reside in urban centres and who have a knowledge of urban conditions, perhaps in some cases even more intimate than

they have of rural conditions. The reverse of this is not, I think, equally true; it is not often that a city is represented, at least in this Parliament, by a member who resides for the greater part of his time in the country. These are all reasons which in the past have caused committees which have had to do with the work of redistribution to recognize the justice of permitting a larger unit for the urban constituencies than for the rural. I confess that the introduction of parties representing a class, if they are rightly to be so regarded, would be to my mind a reason for departing from that principle; but I hope that Parliament will not become representative of classes as distinct from representatives of the people as a whole. It is important, I think, that all classes should be represented; but class representation would be in my opinion opposed to the point of view that a candidate when elected to Parliament represents all the people from the community from which he comes, irrespective altogether of the classes to which they belong.

And that brings me to the third consideration which should be a guiding principle in the shaping of the electoral districts, that, namely, of the compactness of districts. An effort should be made, within county boundaries or within recognized defining lines as between urban and rural centres, to have constituencies as compact as possible so that public opinion within one given area will be as nearly true to the feeling of the whole community as it is possible to get it.

I think the one remaining important principle is that of maintaining, both in the case of representation in rural areas and in the case of urban areas, an equalization of population as between constituencies. The reason of that is obvious. It is desirable that the different constituencies should be, so far as may be possible, very much on an equality in regard to the numbers of the persons who compose them.

It will not be possible, of course, for the committee to work out a redistribution, following county municipal organization along the lines which I have indicated, with mathematical exactness. That has never been found possible, and never will be; but in this as in all matters common sense and fair play should be our guide. . . .

There was one point I omitted. . . . Population in the rural communities—and this, I may say, was the argument that Sir John A. Macdonald used in defending the policy of giving the rural area a larger vote—is for the most part a stable population. Families remain on the land from generation to generation, occupying for the most part the same areas over long periods of time. The population in the cities is, in large part, a floating population; it is constantly changing. If my hon. friend will stop to reflect he will see that having regard to persons in the community over an equal period of time, say five years, the rural population would be entitled to a smaller unit in order that there should be true representation by population.

July 15, 1924. Mr. MEIGHEN (Leader of the Opposition): . . . My

first and main charge against the redistribution is that it amounts to a virtual disfranchisement of half the cities of Canada. I am quite aware that from confederation an advantage has been given to the rural parts of our country in redistribution. In all representation Bills which have ever been passed it has been taken as an axiom, often without very much support, that there should be a larger representation given to the country districts than to the cities, in proportion to population. It is entirely true that in the redistribution of ten years ago this principle was maintained; and although in my judgement it was less accentuated then than it is now, nevertheless it was insisted upon to a greater degree than could be justified on any ground whatever.

I call attention first to the reasons which have been advanced in favour of this disparity—I mean, of the general principle of some advantage to the rural representation. To the reasons which I have heard I accord some weight, weight however which in my judgement diminishes with years and which is, by no means as potent now as it was in earlier days. The first reason is this, that owing to the territory to be covered the member had great difficulty in reaching his people and ascertaining their views in order properly to represent them in Parliament, when he represented a rural district than would be the case did he represent a city. This reason loses force with time, because, first of all, our rural territories have contracted in area and our population has increased. So that the districts are not so scattered, although, it is true, they are to some extent. But there is another reason why the disparity should be reduced; and the second reason has much more force than the first. The difficulty now of covering the district is infinitely less than it was fifty, forty, thirty, or even ten, years ago.

. . . So far as an election is concerned, I can give reasons why it is far more difficult to represent a city seat than a country seat. Hon. members know as well as they are sitting in their seats to-night that the cost of representing a city seat is greater than it is in the case of a country constituency; and the cost of an election in the city is greater than it is in the country. . . .

The third reason is this: That the country population is more stationary; that there is not the same movement from place to place, not the same tendency to leave on short notice, not the same passing of crowds, perhaps to other countries, as at times takes place from the cities. It is true that the country population is more stationary, that it is more likely to remain. The proportion of those who have a real stake in the country is larger in the rural districts than in the city. But this reason is also diminishing in its force as time goes on. The proportion of our people in the cities who now have a stake is getting greater, and the stake of our cities is getting greater. There is almost

as much fluidity of population in the country as in the city. I do not know that the difference now is very great, but I admit so far as there is a difference the advantage is with the country population.

The question then comes, how much weight should be attached to those reasons; what should we allow in the way of extra advantage to a country population? I submit it is very dangerous to allow too much. You cannot go too far in denying to a great people their fair share of representation in this House. If you do, instead of securing the institutions of our country you are only likely to be affronting that sense of justice which is in the breast of almost everybody and making more determined those who would overthrow those institutions. It is dangerous for this House to deny too violently to our city population their fair share of representation here, and I affirm without the slightest hesitation that the extent to which that process has gone in this Bill is utterly indefensible. It is an affront to the whole of our city population; it is in the province of Quebec, and still more so in the province of Ontario. I know that in the city of Montreal on the last redistribution a unit of some 48,000 was struck. I know that in the city of Toronto a somewhat smaller unit of population was struck. If I remember correctly, the Government of that day and the Government supporters on the committee yielded in this respect in order to effect a compromise with their political foes, knowing as they did and as we all know in this House to-night, that the Conservative party, generally speaking, is stronger in the cities than in the country—or I should say that the Conservative party as against the Liberal party is stronger in the cities. Therefore the Government of that day only went a distance beyond what they felt was right and the Government supporters a distance beyond what they thought was fair in order to effect a compromise with hon. gentlemen opposite.

Now we come to a time when hon. gentlemen opposite are in power. Now we come to a time when every reason that in the past should give advantage to the country districts has weakened in its force from what it was ten years ago, twenty, thirty, or forty years ago. Yet we find that the cities are denied more violently than ever their fair share of representation in this House. For example, we find in Montreal only thirteen representatives to a population of some 750,000 people, not to consider the immense increase that has taken place since 1921, which, according to the hon. member for Chamby and Vercheres, would run the population up to over a million to-day. But keeping wholly out of count the increase since 1921, we have a unit of some 55,000 or 56,000 in that city as against a unit of 31,000 throughout the rest of the province of Quebec. The city of Quebec has about the right representation, about 104,000 people with three representatives. Disability to that extent I do not think any hon. member from the city of Quebec or anywhere else would complain

of. But when we run it up to 55,000 or 56,000, an increase of 75 per cent. over the unit for the rest of the province, surely there is ground for complaint; surely you have there disfranchise~~ment~~ on so wholesale a scale as to be incapable of defence here or before the electors disfranchised.

But come to the province of Ontario. The city of Toronto has even a larger unit, though not very much larger, than that of Montreal. The four largest cities of Ontario—Toronto, Ottawa, Hamilton, and London—added together have a unit of population of 55,972; 28 short of 56,000. The rest of Ontario has a unit of representation of 25,642. In a word, 25 people in any average rural district of Ontario, even including all the smaller cities, have as much say in the Government of Canada as 56 people in either London, Toronto, Hamilton, or Ottawa. I would like to hear from hon. gentlemen opposite how they support a disability so striking, so startling as that. Never in the history of redistribution has a disability like that been suggested to this House. How can we answer to the people of Toronto, how can we answer to the people of the rural city of London, with a population of 54,000 and only one representative, while Huron and Bruce, with a population of 92,000 have four representatives? There is no answer.

Mr. MACKENZIE KING (Prime Minister): There is one significant point of which my right hon. friend made no mention . . . that if one looks at the complexion of the House of Commons as it is at the moment and as it has been in all Parliaments since confederation, one will see that while there may be a number of members of the House residing in urban centres who represent rural districts, there are very few if any instances of members representing urban constituencies who reside in rural communities. The important consideration in the discussion of questions which come before the House is the point of view gained from one's environment and the familiarity which one has with the different phases of questions which may be presented here. Take the city of Montreal which has been referred to many times this evening. The attention of the House has been drawn to the circumstances that it will have thirteen members; but sitting in this House at the present time are the hon. members for Brome (Mr. McMaster), Chambly and Vercheres (Mr. Archambault), Charlevoix-Montmorency (Mr. Casgrain); and Drummond and Arthabasca (Mr. Laflamme). These are four rural districts, but I think every hon. member will admit that the gentlemen who represent these rural districts are wholly familiar with the Montreal point of view. They are all residents of the city of Montreal and in any question affecting that city which is discussed here they take as much interest as they do in questions affecting the constituencies they represent. Other cases may be cited. Take my right hon. friend and myself.

Each of us represents what would be termed rural constituencies, and yet the association of our lives has been with urban centres.

B. RELATION OF A MEMBER OF PARLIAMENT TO HIS CONSTITUENTS

I. 'REPRESENTATIVE OR DELEGATE?'

(*Manitoba Free Press*, August 2, 1919 (editorial).)

At many of the farmers' conventions in western constituencies—perhaps at all of them—at which a decision in favour of political action was reached the intention was avowed of surrounding any representatives they might send to Parliament or to the legislature with safeguards and limitations which would make it impossible for them to take a course not in keeping with the desires of their constituents. It is proposed that these representatives shall go to Parliament pledged to support a specific and definite policy; they are to leave behind with the executive of the party a signed and completed resignation which it will be within the competency of the executive, upon the approval of a sufficient number of members being secured, to forward to the Speaker of the legislative body to which they belong. Thus a member will have suspended over his head a veritable sword of Damocles to be loosed when in the judgement of the home-folks he wanders from the straight and narrow path in which his feet had been set before leaving home.

The effect of this procedure if carried into effect will be to make the member a delegate in the strictest sense of the term instead of a representative. The merits of the two systems of representation have long been a subject of academic discussion. The delegate goes to Parliament under specific instructions as to what is to be supported and what is to be opposed. If new issues arise he is supposed to be governed in his course by the opinions and desires of his constituents as expressed through local machinery created for the registering of opinion. He is an advocate and he gets his reward in such distinction as may attach to membership in the bodies to which he belongs. Between a delegate and a representative in the traditional meaning of the latter term there is a wide difference. The classic justification for the representative, as against the delegate, as the true contribution to a popular assembly by an electoral district is, of course, Burke's celebrated letter to the electors of Bristol in 1774. . . .

Such devices as those suggested at the farmers' conventions are intended to guard against the betrayal of his constituents by their member under the pressure or inducement of improper influences. There have, unfortunately, been many cases of such betrayal. But the remedy is not in depriving the representative of that proper liberty of action which is necessary if he is to serve not only the interests of his constituents but as well the wider interests of the whole country

in conformity with 'the order and tenor of the Constitution' to which Burke referred. The true safeguard is in the character and probity of the man chosen; the security of his constituents must repose in the character, not the promises of the representative. The man best fitted to serve as representative would, in the great majority of cases, decline the honour if asked to submit to restrictions and limitations which would reduce his status to that of a delegate.

The trouble which has developed in the west between the rural members of Parliament who supported the budget proposals of the Government and influential sections of their constituents has arisen because these constituents have regarded their members as delegates whereas the members considered their status as that of representatives. In these constituencies there was a strong desire, which swamped all other considerations, for immediate reductions of the tariff; and they demanded, by letters and resolutions, that their members give expression by their votes to this desire. The members, while expressing themselves in sympathy with the movement for a lower tariff, declined to cast their votes as directed because in their judgement larger national considerations made it inexpedient for them to do so.

The chief of these considerations, as they have set them forth, was a refusal to take the responsibility of destroying the Government and precipitating an election in June when, they declared, the time was inopportune, with demobilization uncompleted, with no definite policies formulated by either of the parties that would compete for office, with the War Times Election Act still operative and with no machinery available for the prompt taking of the vote. They say their course of accepting the tariff changes as an instalment and leaving definite action over until the proposal of a revised tariff is before the House at the next winter session was necessary in the national interests and was not inimical to the special interests of the districts they represent. This issue is now being fought out in the arena of public opinion and it is evident that the assailed members are not entirely without defenders.

2. THE RECALL OF A MEMBER OF PARLIAMENT

(a) *Statement of O. R. Gould, M.P.*

(*Canadian House of Commons Debates*, April 13, 1920, p. 1181.)

Mr. EDWARDS: Will my hon. friend now answer the question I asked him a few moments ago about the recall?

Mr. GOULD: The question is a very fair one. We have that, as recorded, in our platform. We believe in the principle of direct legislation. We also believe that with the initiative and the referendum you may have the recall. That is one of the planks of our platform, it is one of the things we discussed in our local. An agreement does

exist between my committee, whose names I have read, and myself. Forty per cent. of the number of electors who voted at my election may, if I refuse to do what this committee asks me to do on the floor of this House—and that committee must meet very often and find out what public opinion is in the district of Assiniboia—if they advise me and I refuse to do that they can apply the recall, and ask me to go back. In going back I have the right of appearing before the people and giving an explanation of my attitude. The recall does not necessarily mean that they take the initiative away from me; in fact, it is both implied and actually written in my agreement with the committee that they do not wish to take the initiative away from me. I have given that agreement to my committee.

Mr. EDWARDS: How many are on that committee?

Mr. GOULD: It is a committee of fifteen that was appointed by a general gathering of the people from all over the electoral district. Everybody was welcome, and they got together and appointed that committee and told them to proceed.

Mr. EDWARDS: Did my hon. friend place his written resignation in the hands of that committee?

Mr. GOULD: To call the document I have placed in the hands of the committee a resignation is a misnomer. I did not place my resignation in the hands of the committee. That would be a very difficult thing to do in practice. It is an idea that has gradually attached itself to the principle of the recall. It is not correct to say that you place your resignation in the hands of a committee. I have not been asked to do that. Some of the members of my committee did put it that way, but after an explanation they could all see the reason why such a thing could not exist.

Mr. EDWARDS: Would my hon. friend be good enough to place that agreement on Hansard for the information of the House?

Mr. GOULD: The committee hold that agreement. I also have a copy, but I haven't it here. It is something that I would not be afraid to place on Hansard, and yet I do not think it absolutely necessary. I do not see what object it would serve. We take the stand that any individual can make whatever agreement he likes. Nothing can prevent you having your private agreement with a committee or a man. I am very pleased to say that some planks of our platform have been adopted by this Government, and the day will come when the recall will also be adopted. Public opinion will oblige whatever Government is in power to adopt that principle.

(b) *Discussion in the House of Commons*

(*Canadian House of Commons Debates*, May 5, 1920, pp. 2023-37.)

Mr. TWEEDIE: Clause 39 (of the proposed Franchise Act) refers to the disqualification of candidates. In the consideration of the subsection which had relation to campaign expenses of candidates, a

discussion arose incidentally touching the subject of agreements which are in the nature of a recall, and at that time I submitted that we should have legislation on the statute which would cover that point, so as to disqualify from holding a seat in the House any man who signed his resignation in advance of an election or who entered into any agreement which in itself might operate as a recall, placing in the hands of a committee, whether large or small, the power to demand his resignation. Undoubtedly there has been an endeavour, especially in the West, to engraft upon our constitution something which is not in the least degree adapted to it or to the laws of any of the provinces....

. . . I think that the question of the recall, whether it may have justification, or whether it may have advocates, cannot be introduced into this country, but when we get down to the scientific recall which has been adopted in a great many of the western States we find that the power which is given by the recall is not reposed in the hands of any individual, and it is not reposed in the hands of any committee which may be selected by any particular group, but the recall, no matter whether the percentage of those who are required to sign the petition for recall be large or small, is a power which, in theory, is reposed in the body of the electors and the electors as a whole are entitled to exercise it.

What do we find to be the system which is being adopted in this country? There is no pretence whatever to repose power in the majority of the people. There is no pretence to repose in the people, as electors, the right to circulate and sign a petition to recall a man from the legislature, but the right is exercised as the result of a bargain. The man who is a candidate in many cases is asked to sign his recall before the people have even had a chance to vote whether he shall represent them or not. In the case which we have cited in this House by the hon. member for Assiniboia (Mr. Gould), we find that an agreement is entered into between the candidate and a committee of fifteen men. These fifteen men are not the choice of the people of the country. They are generally men who are closely allied with a political organization and the object of the agreement is that that committee of men who are bound by party ties shall exercise a jurisdiction over the man who has been elected to represent the people in the House of Commons. As I pointed out before, I believe that any such method as that simply results in the stultification of the man who occupies a seat in this House. When he comes here he must realize that, if he is an honourable man and has entered into an agreement with these fifteen men, or with any committee, he is bound to obey the dictates of those fifteen men, and if they say: 'You shall vote for some particular piece of legislation,' he must either violate his agreement and become a dishonourable man or follow the dictates or instructions which they give to him. It is fettering

him in deciding the course that he shall pursue, and it is fettering him in the performance of the duty which he owes to the people as a whole. The results which were pointed out by Edmund Burke in a speech which he made to the electors of Bristol when he was withdrawing from the contest there, are working out in the same way in this connexion. Mr. Burke says:

Let me say, with plainness, I who am no longer in a public character, that, if, by a fair, by an indulgent, by a gentlemanly behaviour to our representatives, we do not give confidence to their minds and a liberal scope to their understandings, if we do not permit our members to act upon a very enlarged view of things, we shall at length infallibly degrade our national representation into a confused and scuffling bustle of local agency.

A man who signs any such agreement with a committee is simply a delegate to this House and not the representative of the people of his constituency or a representative of the people of the whole of Canada. If the people of this country desire the recall, I submit, it is their duty to bring about such a change in our constitution as will permit it but it is not their right to attack and subvert the constitution and try to introduce into our system something that is unconstitutional; or to try to defeat the ends of our Constitution or to make the House of Commons, which is supposed to be representative, unrepresentative. When they get the Constitution amended so that the recall may be properly adopted under it it will be time for us to determine whether or not we shall have the recall in this country. . . . I am bringing this before the House for the purpose of getting a free expression of opinion and I shall now read my amendment. I beg to move:

That clause 39 be amended by inserting, as paragraph (h) of sub-clause 1, the following words:

'(h) Persons who have signed any agreement, whether amounting to a resignation, a recall or otherwise, which would in any manner whatsoever limit the independence of such person in the event of his being elected member of the House of Commons.'

Mr. FIELDING: With my hon. friend from Calgary (Mr. Tweedie) I have little admiration for the recall. In these progressive days, so-called, there is a demand among many excellent citizens for a plan of political action which is described as the initiative, referendum, and recall. I do not find myself able to join in that demand. The referendum is occasionally necessary. We have it in our municipal affairs, we have it in the Scott Act, and we are going to have it under the Act which we adopted last session in connexion with the question of prohibition throughout the Dominion. We are all in a measure joining in the referendum from time to time. The initiative has less to recommend it, although I speak with great respect because I

know very many people in the country regard it as one of the things which modern politics require.

In regard to the recall, I entirely disapprove of it. I have no sympathy whatever with the recall, but why should I prevent any man in any part of Canada supporting the recall system if he wants it? I regard it as an unwise thing on the part of the farmers, but if they are pleased to regard it as a part of wisdom, and they want to establish the recall amongst themselves, I do not see why we should by legislation deny them that privilege.

I may think it is not the best form of legislation; I may think we would be very unwise in passing it; I would not vote for a candidate who signed a recall pledge; I think good reasons could be shown why the recall ought not to commend itself to the best judgement of the country; I regard it as a matter entirely belonging to—shall I say the internal economy of the Farmers' party; but if it pleases them I do not see why they should not be allowed to have it. We may do very many things which in the eyes of our neighbours are unreasonable and foolish, but we would not legislate against them. If the farmers say they will not vote for a red-headed man I might think it is unwise, but if it pleases them it does not hurt me—let them have the privilege if they choose. They may say they will not vote for a man who wears good clothes—we have these days a movement for the wearing of overalls—and they will only vote for the man who belongs to the Old Clothes Brigade. That is perhaps very commendable, but I do not think it is a matter for legislation in any shape or form. I strongly urge upon my hon. friend from Calgary—with whose views concerning the recall I largely sympathize—not to treat it as a matter for legislation at all. Let us leave the recall to the people of this country; let them try it a bit. I believe the best thing we can do in the case of some of these so-called modern reforms is to give the people a chance to try them out and they will discover very often that they do not produce the great results they hoped for. With reference to the recall, if it pleases our farmer friends to have it as part of their platform, let them have it within themselves, and I think they will get tired of it eventually.

Mr. GOULD: . . . I have a recollection of April 13, when I explained to the House that I had neither signed the recall nor placed my resignation in the hands of the committee. I believe I made a statement in regard to an agreement with the committee and I will give the information once more, that the agreement which I have with the committee is that if they disapprove, they can ask me to come back and explain, not to resign. The onus of responsibility is on the committee in the first place, and I maintain that it is in the interest of good legislation that all the members of this Parliament should be

under a similar arrangement. I have a committee of fifteen who are keeping themselves well posted upon public matters in that part of the country, and they are advising me from time to time. They are sending me information and their opinions on public questions, and this helps me materially in my course in this House. I am very much pleased to have their opinions, and I am sure the hon. gentleman for Calgary West can find in his electoral district fifteen men who can and would advise him, and possibly at times he would find that their advice would not conform with the opinions he expresses here. The advice I receive is good, and I say that such a course is progressive. That is one of the reasons why we claim the right to call ourselves progressive. . . . Hon. members come to this House with the right to sit for five years, representing or misrepresenting the people during that time. Some have done things contrary to the interests of the people, yet the people who sent them here have had no recourse. That is the reason why the recall has been introduced, and I believe it is a good thing to bridge the gulf between the time a member is elected and Parliament dissolves and he presents himself again to the people. . . .

Mr. EDWARDS: . . . The objectionable feature is that the hon. member (Mr. Gould) entered into an agreement with a certain group of men in his constituency. He thereby placed himself in the hands of some fifteen men in that constituency and he says they keep careful watch of all his movements and actions in this House. He gets advice from there occasionally as to how he should conduct himself down here. They keep tab on his movements and discuss his every action in Ottawa, and the retention of his seat in this House depends upon his strict compliance with the dictates of these fifteen men. This, at any rate, is according to the statement of the hon. gentleman made on April 13th. He entered into an agreement which is tantamount to a signed resignation; he says so himself. His conduct is vigilantly watched by these men, who keep track of everything he does and says in this House, and if he should assume an attitude down here that does not commend itself to them they can initiate certain steps to get him to resign his seat. He may object to these fifteen men commanding him to hand in his resignation, because he has a sort of court of appeal to which he can resort. He can say: 'It is all right; I entered into an agreement with you fifteen gentlemen—the council of fifteen—and although you think I have not done right at Ottawa and are asking me to quit, still, according to the agreement, I may either quit or ask you to present a petition signed by forty per cent. of the number of those who polled votes.' That is the position in which the hon. gentleman stands. If they get forty per cent. of the number of votes polled at the election, then he must resignedly step down. Why, Sir, that is not even an expression of the opinion of the constituency. If it were fifty-one per cent. or anything over fifty per

cent. of the votes of the electors of the constituency you might perhaps say that you were having an expression of opinion from one of the constituencies of Canada; but it is not even the majority of the constituency that is going to have the power to tell this man to give up his seat and go back to Assiniboia. I say, Mr. Chairman, with all due deference to those who believe in the principle of recall, that this important matter should be determined on the floor of this House. If a majority of the members approve of it and feel that its practice will be beneficial, all well and good; we can adopt it and crystallize it in the form of legislation. But until that is done, I certainly say that no group of people should be allowed to hold that power in their hands, for it is not in the best interests of the country at large that this principle, until at least it is recognized by a majority of this House, should be put into practice. . . .

Mr. HOCKEN: As I see the matter, the recall is the most objectionable feature of class government, and it is something that could be worked out by a class aspiring to rule the country in the interest of that class to the detriment of the whole community.

Mr. GAUVREAU: The hon. member goes straight to the point.

Mr. HOCKEN: I do not see any difference between a man coming into this House, having signed an agreement with fifteen farmers to retire when they request him to do so, and a man coming into this House, having signed an agreement with fifteen manufacturers to retire when they ask him to do so. What would my hon. friends of the third party say if a man came into this House who had signed up an agreement with fifteen manufacturers, or fifteen bankers, or fifteen of any of those classes that they call the capitalistic classes? But there is absolutely no difference. Let us assume that the manufacturers put up the campaign funds for a man and he is elected to this House. They will then be doing exactly what the farmers are doing in the West, and because in the West they put up the money to elect a man, they tie a string to him and say: 'You can stay in the House of Commons only as long as you do as we say.' If that be parliamentary government under British institutions, then I do not understand parliamentary government.

II

PERVERSIONS OF REPRESENTATION

A. 'THE PORK BARREL'

(M. Grattan O'Leary in *MacLean's Magazine*, February 15, 1924.)

Theodore Roosevelt, master of the vivid phrase, called patronage (the 'Pork Barrel') a 'cootie on the body politic'. He did not overshoot the mark. For the 'Pork Barrel', dispensed with equal rapacity by all parties and governments since confederation, has been the worst

penalty of our Canadian democracy. It has been the chief source of whatever of corruption has degraded our public life during the past fifty years. It has sinned more than all other agencies combined against efficiency and honesty in politics. And it stands to-day as one of the chief reasons for the extravagance and waste that father taxation and debt.

How does the 'Pork Barrel' operate?

Briefly, it is simply a system, or practice, by which parties in office use public moneys to bribe or debauch constituencies, to the end that they may continue in power. It is a system by which a Government dispenses rich favours to constituencies and groups that are friendly—or subservient—and neglects or starves constituencies and groups that are hostile. It is a system that exalts the creed that 'to the victors belong the spoils'—the spoils being public offices, or public moneys, or the public domain.

It is seen at its best, or worst, in the supplementary estimates—when the 'faithful' are rewarded—or when a Ministry becomes fearful of a by-election verdict.

Let me give an illustration. And just to impeach the accusation that these articles are but an attack upon the present Liberal Ministry, let me take the illustration from a Conservative régime. In 1920 there was a by-election in Victoria, B. C. It was necessitated by the appointment of Dr. Tolmie as Minister of Agriculture in succession to Mr. Crerar, who had resigned. That by-election had not been in progress a day when the Government announced that it would build a dry-dock in Victoria costing five millions of dollars.

There were ports in Canada in worse need of a dry-dock than Victoria. There was, for example, Vancouver. Vancouver boasted a tonnage four millions greater than the tonnage of Victoria. As against a dry-dock of 450 feet in length which Victoria already possessed, Vancouver had no dry-dock at all. And while Victoria was and is largely a port of call, Vancouver was and is a port of discharge—with dry-dock facilities vital. By every law of logic, shipping needs, efficiency, and common sense, Vancouver should have been favoured; but it was not. As between making certain of the election of Dr. Tolmie, and the proper disposition of docking facilities on the Pacific coast, the Government never hesitated. The consequence was that in due time Dr. Tolmie's post-dated cheque was honoured—Victoria got its \$5,000,000 dock. That is the 'Pork Barrel'.

Last year there was a by-election in North Essex. The King Government's candidate was a very excellent gentleman known as Mr. 'Tim' Healy. In the course of the contest it became evident that Mr. Healy was encountering rough going; and the Government, hearing the news, was disturbed. Accordingly, and in due time,

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there appeared a poster, with this literary effort on Mr. Healy's behalf:

VOTE FOR HEALY
and get
\$86,000 Gov. Docks
and Breakwater;
\$25,000 Waterworks
Free gift from James Cooper.
\$75,000 Brick and Tile Yard
to employ thirty hands the year round.
Vote for Robinson and get nothing
but hot air.

King needs Tim; so do you.

TIM AND KING—THAT'S THE THING.

That would be amusing—if the country didn't pay. Unfortunately, however, the country paid. The note matured towards the end of last session. The vote was brought down in the Supplementarys and jammed through the House almost at the eleventh hour, before prorogation; and thousands of dollars were added to our tax bills because—because 'King needs Tim'.

Halifax provides the most shocking evidence of the 'Pork Barrel' at its worst. Go down to that city, go over its great terminal works, see where millions have been sunk in deserted and unused terminals—and you will see a pathetic monument to Government patronage and waste. But let that pass. A few months ago there was a by-election in Halifax. It was a hard contest, and the Government, its majority at zero, was desperate. Looking around for a lifebuoy, it discovered that Halifax needed another elevator. Now if there was one thing in the wide world that Halifax didn't need, that thing was a new elevator. It had more elevator space than it had ever used or was likely to use for several years to come. Out amidst the rest of its unused terminals stood an elevator, capable of handling twelve million bushels of grain—yet deserted. For three years scarcely a bushel of wheat had passed through it into the holds of ships.

No matter. The Government would build a new elevator. It would cost \$1,200,000; there would be rich contracts for somebody; there would be lots of work for the 'boys'. And so the Ministerial press, and Mr. E. M. Macdonald, and the Prime Minister himself, spoke eloquently of the Government's generous gift. The money was nothing; the contracts were ready to be let; all that was necessary was to—vote for the Liberal candidate.

Halifax—to its credit—was not bribed. It did not vote for the Government candidate. And what happened? Well, the Government lost all of its ardour for that Halifax elevator. Where a few weeks before it had the money and everything ready to go on with the work, and was about to let the contract for it, it suddenly

discovered that the plans were all wrong, that they called for something it didn't have in mind, and that the tenders were too high.

And there will be no elevator built. Halifax not having come across with votes, the 'Pork Barrel' will not come across with an elevator.

From Halifax to Kent. At first it looked easy. Kent was almost traditionally Liberal, and it is three-fourths Acadian; the Ministry was confident. Then things darkened. Stories came to Ottawa of a Maritime revolt; and so shock troops and the 'Pork Barrel' were sent into action. For what subsequently happened, and as a delightful illustration of how Ministers love to use public moneys to buy up a riding's votes, let me quote this dispatch from the public press:

Santa Claus came to Richibucto this evening, bringing gifts for the people of Kent; some prospective, it is true, but all alluring. One of the number, Hon. Ernest Lapointe, Minister of Marine and Fisheries, brought his gift in his hand, something definite. He announced that commencing on the fifteenth of this month the fisheries' inspectors of this province would not have to report to the chief inspector at Halifax.

Another gift-bearer was the Hon. A. B. Copp, Secretary of State, and representative of New Brunswick in the King Government. He far outbid his colleague of the Fisheries Department for he intimated that the return of the Liberal candidate, Alfred Bourgeois, would mean the extension of the Moncton-Buctouche branch line to Richibucto, a distance of some eighteen miles.

The third gift-bearer was Hon. P. J. Veniot, Prime Minister of New Brunswick. Premier Veniot said that only recently a delegation from Richibucto had waited on the Provincial Government in the hope of having the provincial system take over the system which Richibucto and its neighbouring town has on the Kouchibouguac river. Immediately he had issued orders that the engineers of the hydro system make a survey and see if it was possible for the Government to acquire the civic power system and link it up with the hydro system, and thereby give the people of Kent good service.

Mr. Copp, on a later occasion, was particularly clear in pointing out the material benefits that would come to Kent if it voted for the Government candidate. He said:

Now, I want to ask you in all fairness, who will be your representative? Who will be the more apt to get a more reasonable and fair consideration for you, Doucett, the Conservative, or Bourgeois? It is to your very good advantage . . . if you want better railway facilities for this part of Kent to elect Mr. Bourgeois. . . .

Kent, like Halifax, declined to be bought. But if it had not so declined the public money would have been used to redeem such talk. And it is because constituencies don't often decline, it is because ridings succumb to this shameless use of the 'Pork Barrel' that the public's money is poured out in waste and Canada is confronted year after year with the spectacle of red ink deficits.

But how, it may be asked, do such votes get through Parliament? What of the Opposition? What of those watchdogs of the Treasury who murmur incantations about economy? Where are those alert Progressives who were to take us all from the boglands to the eternal summits of righteousness? For answer let me try to picture one of the dying days of the session. It is a hot, sultry day in June. The end of the session is in sight; members who have orated about everything and anything for months sit like rows of exhausted volcanoes. Some, their indemnity cheques in their pockets, have already gone home; others are preparing to go. Only long rows of empty seats confront the Government; even the Press Gallery is deserted. In a low monotone voice the committee chairman reads out item after item of supplementary estimates—thousands, tens of thousands, millions—the Ministers and a few parrot supporters call ‘Carried! carried!’ There is hardly a voice to object. Thousands for this, tens of thousands for that, millions for here, there, and everywhere; and barely a word of discussion, not an attempt at intelligent scrutiny. Wharves for Nova Scotia, breakwaters for Quebec, public buildings for New Brunswick, other things for Ontario and the West, until millions upon millions are spent. It is the ‘Pork Barrel’ at its deadliest and best.

Exaggerated, you say. Well, let us see. In 1921, when Mr. Meighen was Prime Minister, Parliament prorogued on the fourth of June. On the 31st of May—four days before—Supplementary Estimates were brought down totalling \$23,000,000. Nor was that all. Because Parliament had frittered away its time in puerile, futile talk for months, the Main Estimates had not been considered, and, as a consequence, the House passed the following votes on June 1 within two or three hours:

<i>Railways and Canals—chargeable to income—Miscellaneous</i>				
Board of Railway Commissioners				\$206,000
Loan to the Canadian National Railways				\$50,000,000
Loan to the Grand Trunk				\$89,000,000
Loan to the Grand Trunk System				\$26,000,000
To provide salaries and expenses in connexion with the arbitration of the railways				\$1,000,000

Here we have the colossal sum of nearly two hundred million dollars actually voted within two or three hours, and with practically no discussion. Nor was that all. On this same day—Wednesday, June 1—the following sums were also voted:

Canadian Government Railways and Canals, \$7,000,000; Canals—staff and repairs, \$2,270,000; Railways and Canals—to pay claims for right of way, \$35,000; Miscellaneous railway equipment, \$1,903,000; Hudson Bay Railway—Port Nelson terminals, \$100,000.

Supplementary Estimates—Railways and Canals—chargeable to income, \$20,500; To increase the amount of loan authorized by vote 478, \$1,520,000.

Railways and Canals—chargeable to collection of revenue—Canadian Government Railways, \$2,000,000.

Civil Government—Department of Railways and Canals, \$1,800, \$1,500.

Railways and Canals—chargeable to capital—various items for the railways as follows: \$3,000, \$1,400, \$97,000, \$4,500, \$70,000, \$50,000, \$47,500, \$50,000.

Railways and Canals—chargeable to income—Railways, \$80,000, \$50,000, \$130,000.

But the worst is yet to come. For on Friday, June 3, the day before Parliament prorogued, money was voted with an abandon, a carelessness, and a callousness that simply appals. The actual number of items voted is wearyingly long, but they throw such a luminous light upon what takes place in Parliament in respect of the taxpayers' money, that I am constrained to reproduce them in full. Here, then, is what was voted within five or six hours on Friday, June 3, 1921: [Here follow columns of detailed expenditure totalling \$156,994,469.00].

All this is taken from the Official Journals of Parliament. It is the answer to the challenge: How does the 'Pork Barrel' escape Parliament? And this was in the year 1921—when the National Debt increased by some \$80,000,000.

A few years ago, when Mr. Fielding sat upon the Cross Benches, and was not shackled by partyism, he voiced a solemn protest against expenditures being rushed through the House. I have not his words before me, but I have a vivid recollection of the deep impression which his protest made at the time. Alas for political professions and practices! For last session, sitting in the seats of the mighty, Mr. Fielding sinned grievously against his pre-office creed. In his budget speech he had pleaded for economy. He had painted a sombre picture of taxation and debt, and he had warned the House that only through retrenchment, only through rigid elimination of waste, could the country be rescued from peril. But the power of the 'Pork Barrel', the rapacity of his followers, was too strong. And so three or four days before prorogation the House saw him forced into the humiliating surrender of bringing down \$15,000,000 of Supplementary Estimates, estimates which, for their stark allegiance to the principle of pure party patronage at the Treasury's expense, were hard to surpass. Wharves, breakwaters, post offices, customs buildings—political manna for the 'solid sixteen' of Nova Scotia and the 'solid sixty-three' of Quebec—such were the Supplementaries of last year. Yet people ask why we plunge into debt and why taxes grow increasingly high!

One of the characteristics of the 'Pork Barrel' is its versatility. It works in countless ways. Take, as an illustration, the Government's purchase of supplies. In the old days, a new Government simply supplied all departments with a list of its friends. This was the list of the chosen people, the victors to whom the spoils of office must go

in the form of all Government contracts and in the purchase of Government supplies. No need to worry about tenders, or quality, or price; the plums must go to the fortunates who voted for the party in power. During the War there was a change. Sir Robert Borden—to his eternal credit—tore up these patronage lists. He made merit, tender, and competition, not campaign contributions, the key to Government contracts and purchases; and a little later on, when partyism was submerged into a War Administration, a War Purchasing Commission was brought into being. That War Purchasing Commission, continued after the War, and saving the country millions, no longer exists. It was driven into extinction this summer, and we were informed that hereafter purchase of supplies and letting of contracts would be a function of a 'committee of the Cabinet'. Few more sinister announcements have come from Parliament Hill for many a long day.

I have left for the last the most costly extravagance of all—the 'Pork Barrel' on a national scale. It is the practice by which Governments or parties try to bribe not only a single or a number of ridings, but attempt to indirectly buy up the country as a whole. It was this motive which, as much as anything else, fathered the crime of a transcontinental railway from Winnipeg to Moncton, a project prohibited by common sense, and which now hangs like a mill-stone around the neck of this country. It was this motive which in days gone by made the old Intercolonial a political football, the sport of politicians, and a drain on the national treasury. It was this motive which incubated that fantastic and ruinous undertaking, the Hudson Bay Railway.

The promise of the Hudson Bay Railway, with the subsequent hare-brained attempt to give it effect, was a pure bribe to the West. It was a bribe in which both the old parties played an equally dis honourable role. And the mere fact that ghastly failure of the project has brought neither courage nor wisdom to either party, so far as continuation of the scheme is concerned, impeaches the mushroom professions of economy now being thundered from Parliament Hill.

In the thirteen years that I have been watching Parliament from the Press Gallery I have never met a politician who would privately defend the Hudson Bay Railway. Yet just because it is considered good molasses to catch political flies on the plains, the parties are all for it. All for it; and to-day some twenty-five millions of the taxpayers' money are represented by rusting rails and by Hudson Bay ports whose chief noises are the barking of wolves.

The cold truth is that the average politician is for economy only so long as it is a cry. He will talk of retrenchment in the abstract, but he will raid the Treasury with the rapacity of Captain Kidd when it is his own riding or his own pet project that needs to be buttressed by dollars. Thus, we have seen even Mr. Meighen himself appear before

Ministers of the present Government to plead expenditures for his riding of Kemptville.

And that is why taxation is high. That is why we flounder into a morass of debt. That is why depressed industry and mounting living costs send our best brains to rear higher the prosperity of a foreign land. That, in a word, is the thing which lies at the basis of our economic ills—a system of waste and squander which, unless this country destroys it, may well destroy this country.

B. ELECTION FRAUDS IN ONTARIO

(James Cappon in *Queen's Quarterly*, January, 1905, pp. 307-13.)

We have long been familiar with certain forms of political corruption in Canada, such as the bribery of a low class of voters on election days, the rake-off on contracts obtained by Government supporters, the grants to favoured constituencies, and other examples of the 'spoils system'. Perhaps we can hardly expect to suppress such evils entirely under the party system of government. Even under a very honest Government indirect and more or less decent forms of the spoils system are likely to be found. But in Canada we have allowed this system to establish itself in its worst features and so strongly that it has all but become an openly acknowledged method of government. For this undoubtedly the Conservative party in the old days of its power was mainly responsible, and in a special way, perhaps, its old leader, Sir John Macdonald, was responsible. For the leader of a party is the one man who can effectually suppress evils of this kind without incurring enmities powerful enough to ruin his personal prospects with the party. It is becoming more and more apparent that modern democracy means a one-man rule of a very stringent kind. Modern parties make public worship of their chief a matter of business, and if he happens to be an able man, he soon undergoes a kind of apotheosis in the eyes of the country which makes him all powerful with his party. The organization that made him soon comes to stand in awe of him. He is the one man whom the country may fairly hold responsible to the fullest extent for the tone and character of the party. But it is only fair to remember that Sir John was leader of the Dominion at a most trying period, when its different races and provinces had to be coaxed and conciliated into a national federation. As he said himself, 'Canada was a difficult country to govern.' To some extent that difficulty may still exist for a Premier of the Dominion.

It cannot be said since the Liberal party has come into power in the Dominion that it has done anything to disturb the evil traditions of the system. On the contrary there is too much reason to think that in some ways it has, if not strengthened them, at least confirmed them by continued usage and perhaps by an opener profession of them than one would ever have expected from certain leaders of the

old party of Reform. The inevitable result has arrived. The system has bred a race of politicians who have now begun to put into operation methods which are still worse than the old ones and have a still deeper taint of the conscious criminal and law-breaker about them. Bad as the bribery of individuals and constituencies is, it does not directly attack the very principle of representative government, that the people shall determine by its vote who is to govern it. But of late years political corruption in Ontario, a province in which there are no racial or social conditions to give the smallest excuse for it, seems to be taking the form of an organized system for depriving the people of an effective use of the franchise by means of manipulated ballots. This is a particularly dangerous thing, as any one may see, in a country where the rural constituencies are scantily populated and the majorities for either party often small.

The list of electioneering frauds in Ontario is rather a long one when we consider that we hear only of those which happen to become public in spite of the saw-off system which is a most perfect device for concealing the extent and depth of political corruption in this country from the public eye. West Elgin was the first case where the new operations of the machine became evident. A statement from Mr. McNish, the Liberal member who was unseated, appeared in the press admitting that the returning officer had been induced to appoint certain persons to act as deputy returning officers under assumed names, the names assumed being in every case the name of an elector appearing on the voters' list. Some of the persons so appointed were outsiders and some were unknown in the riding. This of course secured the conditions most favourable to the work of the machine. At least two of these officers, Duncan Bole and Martin Cahill, officiated under assumed names at booths where ballots had been stolen and personation of voters had occurred. After a long delay a Commission of County Court Judges was appointed to investigate the alleged irregularities on the part of the returning officers and the poll-clerks. The lawyers charged with the prosecution of the inquiry were prominent Liberals. When production of the ballots was ordered, it turned out that they had by an unlucky accident been burned while in the custody of the officials in the Parliament Buildings. As the scope of the Commission had been restricted to the acts of the Election Officers, further inquiry into the affair was blocked. It may be explained that the provincial ballot papers being numbered on the back can be readily identified in an investigation. They differ from Dominion ballots in this respect. Bole and Cahill went out of the country for a time. No one was punished in connexion with the case.

Then there was West Huron, a Dominion by-election but managed by the well-known agents of the provincial machine. In this election one hundred and twenty-five more ballots were returned by the deputies than had been sent out to them. At Goderich twenty-two of

the ballots counted for the Liberal candidate were bogus. The operator disappeared. At the Brockville by-election, also, there were the same phenomena under the same conditions. The accused officers were arrested, were allowed to give bail as usual, and as usual left the country.

Then there was North Waterloo. At the judicial investigation in this case Mr. Justice Meredith declared that one of the deputy returning officers, or some one in connivance with him, did wilfully and fraudulently utter the ballots in his polling subdivision. Another deputy returning officer was 'reported' by the court for the same kind of fraud. The court further declared that the management of the campaign in this election had been 'taken out of local hands by Alexander Smith, representing the Ontario Reform Association', and that 'outside skilled' assistance had been introduced. That is to say, the machine had taken affairs into its own hands.

The cases being 'reported' by the Judges, the two officers were brought up for trial before the police magistrate at Berlin. There was a certainty that fraud had taken place, in the spoiled ballots, in the testimony of many electors as to how they had voted, and in the revelations of an assistant who had at one time been admitted to the councils of the plotters. The declaration of Judges Meredith and Osler, at the preceding investigation, had been explicit as to the existence of fraud. But unhappily it could not apparently be traced to any one. The Crown Attorney who prosecuted said he would not ask for a conviction.

Then there was the Sault Ste. Marie election. Here the incredible effrontery of the affair showed it was conducted by men who were accustomed to defy the law with impunity. A well-known agent of the machine engaged a tug-boat, the famous *Minnie M.*, to carry a number of American 'pluggers' from the American side of the Sault, to personate voters on behalf of the Liberal candidate at two remote stations in the constituency. Attorney-General Gibson, who was at the Sault the night before the election, was informed of the project by a letter read on the public platform and was requested to take steps to prevent its being carried out. It is almost incredible that a Cabinet Minister should have failed to perceive what was the only decent or even sensible course for him to take. But his reply shows the depths to which politics in Canada have fallen. Instead of asking for proofs and declaring that he would stop such an expedition at any cost, he said he was not a policeman. He was only a Cabinet Minister whose word was all powerful with every Liberal functionary and every official in the district; he was only Attorney-General with the whole legal machinery of the province at his command. The *Minnie M.* sailed with her pluggers on board and helped to win a much-needed seat for the Government. It reads like a page from the history of a rotten South American Republic.

In this case also there has been the usual unhappy delay in bringing

the criminals to justice. At every step some technicality turns up to postpone investigation, and the state of the Government will have been decided at the polls before the details of the affair are laid bare in court. It is the same principle on which the election trials of North Perth, North Norfolk, and North Grey were postponed by a hasty summons for the assembling of the House. This is playing 'the game' indeed. Then there was the attempt to unseat Mr. Sutherland in South Oxford by bribing witnesses to give evidence. In this case the judge made the severest comments on the methods employed by Mr. Jackson, the agent for the Liberal party in the protest. After the trial Mr. Jackson ceased the practice of law and was appointed commissioner for the Dominion at Leeds, England. Sir Richard Cartwright defended the appointment by remarking that election business was not 'conducted on the principles of a boarding school for ladies'.

Still more recently the scandals of West Hastings and Frontenac have revealed the type of politicians which the machine is forming. In these places the Liberal candidates had conspired to carry their riding by means of ballot boxes specially manufactured for the manipulation of ballot papers. But here, too, it has been impossible to keep hold of the criminals and investigate the ramifications of the plot. One fled at the first rumour of exposure, the other was allowed to give bail and disappeared in the usual way. A police magistrate in the district was implicated in the case. One of the deputy returning officers had come all the way from Chicago to help us at election time. A third person, a minor accessory, who had been arrested in connexion with the case, testified that he had been offered money to leave the country, and he might easily have done so. Of all the men reported by the judges in connexion with these electioneering frauds only a few guilty of bribery have been fined. The more serious offenders have managed to elude justice.

It is quite evident that these cases are not accidental and sporadic phenomena. They represent the general and inevitable results of a system under which political crimes are lightly regarded and generally escape investigation. It may be possible no doubt to make a plausible apology for the Government in one or two of these cases, but the general impression is irresistible that the arm of the law is deliberately negligent.

C. CAMPAIGN FUNDS

I. ROYAL COMMISSION ON CUSTOMS AND EXCISE, 1927

(*Canadian House of Commons Debates*, March 14, 1930, pp. 613-14, 639-40).

Hon. R. B. BENNETT (Leader of the Opposition): The evidence given before the royal commission (on Customs and Excise) for which Hon. N. W. Rowell acted as counsel, brought out the fact that it was

the contributions of the same men that are now being attacked in this House that enabled them to defray the election expenses. Here is the evidence given before the royal commission under Mr. Rowell's questioning as to the 'rat fund'. That was the term used when Mr. Rowell was questioning the witness. He said, 'We called it the rat fund.' Then he was asked, 'What happened to the rat fund,' and I have here the names of men who secured the fund, and the amount they received when liquor was sent across the boundary. They received so many cents a case for beer, and so much for hard liquor. For what purpose? It was partly for the personal enrichment of the gentlemen who received it, and partly for the campaign funds of the Liberal party of Canada. Here are the words with respect to it: Mr. Rowell said to the witness, 'We did not think it was fair to leave Windsor after taking the small ones without taking you.' The answer of the witness was, 'I think it is quite nice for you to come to Windsor so that we may tell about the rat fund. You had a snake fund down east, and we had a rat fund here.' Then he told the story of the rat fund; he told who was the big fellow to whom the money ultimately went—the custodian of funds for the Liberal party during the election of 1926 and the preceding election. These men, sir, who are now denounced in words of righteous indignation, were those who supplied the necessary funds to carry on the campaign when the hon. gentleman was seeking position and power. Is it any wonder that the people of this country who read and understood the evidence given before that royal commission are getting a little weary of this high, moral indignation about the boundary line? Is it any wonder they are getting a little weary when they hear these reiterations about international conditions and moral delinquencies when all the time, with their tongues in their cheeks, the Liberal party are the beneficiaries of the very men whom they now condemn.

Let us look at these things fairly. I have in my hand the summing up by Hon. N. W. Rowell before that commission with respect to these matters; I have the précis of the evidence given by those witnesses at the border points as to what took place, as to how money was paid, the times they made their contributions and what they made them for. Those statements are here, and now in a fine frenzy of moral indignation we are told that to save Canada from a war with our good friends to the south—who never thought of it—we must be prepared to adopt this measure. It is hard for the Minister of Finance to keep his face straight, the silence is so impressive. . . .

Mr. J. L. BROWN (Lisgar): . . . There is one point to which I think we should direct a few observations, as the Leader of the Opposition put things in an entirely unfair position. He properly referred to the great evil of accepting from the liquor interests contributions for political campaign purposes. I am at one with the hon. Leader of the Opposition in my abhorrence of that method of obtaining election

contributions, but I differ from the hon. Leader of the Opposition in viewing with equal abhorrence the contributions made either to the Liberal party or to the Conservative party. I do not intend to advance this as a *tu quoque* argument, but since the matter has been mentioned I think it should be pointed out that the investigation made by the royal commission showed that contributions were made by the liquor interests to the political campaign funds of both parties.

I would like to read a few extracts from the record of that commission. The evidence to which I will first refer is that of Mr. Robert Fiddes, and the questions asked were put by Mr. Rowell. Since his name is being mentioned, I might say that Mr. Rowell is a gentleman of very high legal ability and of unimpeachable moral character, and it should be a tribute to the Government that such a man as Mr. Rowell was chosen to act in this investigation. The evidence I wish to read is that of Mr. Robert Fiddes of the Consolidated Exporters Corporation and is as follows:

Mr. JUSTICE WRIGHT: That American liquor brought in under those applications was duty paid?

Mr. ROWELL: Yes, duty paid into Canada.

Q. In exhibit 257 in an account, copy of certain items appearing in the books of B.C. Breweries, representing insurance and protection, I notice two cheques issued to you, one October 5, 1925, R. Fiddes, \$4,800, and another of August 25, 1926, R. Fiddes, \$6,000?—A. What date?

Q. One is October 25 [*sic*], 1925, \$4,800; and August 25, 1926, \$6,000—what do those items relate to?—A. Campaign funds.

Q. Which you received from the B.C. Brewery?—A. Yes.

Q. Were you collecting from the different breweries—how did you come to receive these amounts from the B.C. Brewery?—A. Because I handed that over to the manager of the campaign.

Q. Were you handing them over as part of another sum, were you collecting certain sums from the different breweries?—A. Yes, I believe I got—no, just the B.C. Brewery, I think that was the only one.

Q. I notice opposite that is the item 'Memo; our proportion of \$10,000'?—A. That may be.

Q. I want your recollection of what it is?—A. Campaign funds. I think these are items relating to the Dominion elections 1925 and 1926.

Q. How did you come to be getting them from Mr. Reiffel?—A. Just because it was arranged I would hand them over to the campaign management.

Q. Did you collect from the other breweries?—A. I don't think so; the B.C. Brewery I think is the only one; the others handled their own campaigns probably in Victoria.

Q. Here is a cheque to Robert Fiddes dated August [*sic*] 5, 1925, \$4,800 signed on behalf of B.C. Breweries by Mr. Marling and Mr. Twittey?—A. Yes.

Q. And then the voucher for the amount and charge protection account?—A. Yes.

Q. That is part of exhibit 247; and this one is August the 25th, 1926,

\$6,000 signed on behalf of the company by Mr. Marling and Mr. Howatson and Henry Reiffel?—A. Yes.

Q. And the note on it 'Our proportion of \$12,500'?—A. I don't know about that notation, but that is what that cheque was got for and paid.

Q. Was it part of \$12,500, or was it only \$6,000—was this the only brewery?—A. I cannot remember; we paid our proportion I know.

The CHAIRMAN: What do you mean by your proportion—was there some understanding?—A. There was an understanding of the breweries that they would pay so much to these campaigns 1925 and 1926.

Q. How much was that?—A. I do not remember, but that is our proportion individually, that is the proportion of the B.C. Breweries, and we paid it.

Mr. ROWELL: You paid your proportion?—A. Yes.

Q. Did you give contributions to both sides?—A. Yes, to both sides.

Mr. JUSTICE WRIGHT: Equal amounts?—A. Yes.

Q. That is impartial?—A. Yes.

Mr. ROWELL: What was the reason you gave these contributions?—

A. It is a custom; we have always given contributions.

Q. Always given to both sides?—A. To both sides.

Q. And always treat them equal?—A. Yes.

Q. You are strictly impartial?—A. Strictly impartial.

The next is the evidence of A. L. McLennan, the questions being asked by Mr. Rowell:

A. Well, there is a Ripstein that I met in London by the name of H. Ripstein. I know he is in the liquor business on the east coast, the Atlantic.

Q. In the liquor business on the east coast?—A. He handles agencies for Great Britain. I happened to meet him in London this year.

Q. Why would you be paying money to Ripstein?—A. I haven't the remotest idea. I only met him this year.

Q. Here in July is another payment to Ripstein of \$2,000. The first was \$5,000?—A. I didn't know he ever got a cent. I don't know what the transaction is at all.

Q. You initialled it?—A. That is quite possible.

Q. You have initialled it, and he is a man you have met and you didn't know he ever got a cent?—A. I didn't know we ever had any business with him for him to receive any money. We may have. I don't know.

Q. Do you handle any political contributions?—A. Yes.

Q. For the Consolidated?—A. Yes, sir.

Q. For which party?—A. For the Conservative party.

Q. The Conservative party. Did you handle all the contributions for the Consolidated to the Conservative party?—A. On two occasions, I think, Mr. Rowell.

Q. Are those amounts in that list?—A. I don't know.

Q. Did you handle any for the Liberal party?—A. No, sir, none at all.

Q. You are high up in the other party?—A. I wouldn't like to say that.

Then comes the evidence of Mr. Thomas H. Kirk, who was questioned by Mr. Rowell as follows:

Q. You reside in Vancouver?—A. Yes, sir.

Q. And have for many years?—A. Twenty-nine years.

Q. I see your name mentioned in connexion with certain payments in the B.C. Breweries charged under assurance and protection account. Did you get any payments from the B.C. Breweries?—A. I can recollect getting a small cheque; the larger amount mentioned in the papers; I probably could identify it if I could see the cheque.

Mr. JUSTICE ROY: What is your occupation?—A. Retired, a gentleman of leisure.

Mr. ROWELL (showing two cheques to the witness): The two cheques part of exhibit 247 appearing in your name you received, did you?—A. Yes, I received both those cheques.

Q. For what purpose?—A. \$100 I solicited from Mr. Reiffel for I think it is in July on behalf of the picnic fund; the \$5,000 cheque I received during the campaign period of 1925 as treasurer for greater Vancouver for the Conservative party.

Q. They were both then for political purposes; you had no interest in it yourself?—A. None whatever.

I have no defence to offer for these practices which I have endeavoured all my life to combat, and I am quite satisfied that when the hon. Leader of the Opposition spoke this afternoon upon this matter he was not ignorant that such facts were in that evidence.

Mr. BENNETT: I am bound to say that I have not seen that British Columbia evidence; I was dealing with the Detroit river.

Mr. BROWN: I must say that it is rather strange that a gentleman of such eminent ability as the hon. Leader of the Opposition, one who is accustomed to search at great length through interminable files, one who undoubtedly reads the newspapers published from one end of Canada to another, should have failed to see those little reflections which were cast upon the Conservative party. He has heard all about the 'rat' fund but of the other fund he knew nothing.

Mr. BENNETT: I had seen in the public prints that contributions had been made to the Conservative party—do not misunderstand me for a moment—but I had not seen the British Columbia evidence.

2. 'AFTER BEAUHARNOIS'

(Robert A. MacKay in *MacLean's Magazine*, October 15, 1931.)

Is Democracy in Canada a delusion? Are our Governments merely puppets of Big Business? Many a Canadian asked himself such questions as he read the evidence brought out by the committee investigating Beauharnois. That from a single source should be contributed some \$864,000 to the campaign funds of both parties in the federal field and in the provinces of Ontario and Quebec would scarcely be believed by the average citizen if it were not down in black and white as sworn testimony.¹ Nor can it be overlooked that

¹ The contributions were as follows: To the federal Liberal organization and the Quebec Liberal organization \$600,000 to \$700,000, of which the Quebec organization received perhaps \$200,000; to the Ontario Liberal organization \$3,000; to the

over ninety-five per cent. of this went to, or was at least intended for, the parties in power at Ottawa and in Ontario and Quebec. From the Dominion and Quebec, Beauharnois had acquired rights and privileges of fantastic value, and from both it expected more. By Ontario it had been awarded a valuable contract. And oppositions were given pittances which were evidently expected to keep them silent. The facts are disquieting enough. The abrupt cessation of the committee's activities when campaign funds were under discussion and not entirely cleared up, and the refusal of Mr. Bennett to investigate the whole question of campaign funds unless specific charges are made, leads the public to wonder, what else besides Beauharnois?

Nor are we reassured as we glance at the political history of Canada. Beauharnois unfortunately does not stand alone, though it is on a grander scale than similar incidents previously uncovered in Canadian politics. To cite but three or four well-known incidents: There was the great Pacific Scandal of 1873, when Sir John A. Macdonald was toppled from power following the discovery that a railway promoter seeking a concession to build the new railway to the West had contributed to the Conservative party's campaign some \$350,000. There was the 'scandal year' of 1891 when a system of collecting from Government contractors for aiding the Conservative party at Ottawa was discovered, and a similar and perhaps worse system of collecting funds for the Liberal party in Quebec was also uncovered. Again as late as 1926 the royal commission on Customs discovered that liquor interests in British Columbia which were violating the law of the land and defrauding the country of large sums in taxes were protecting their interests by contributing to both old political parties in the province. The facts uncovered from time to time, the charges and countercharges so often hurled back and forth between the parties, and the rumours always current about provincial capitals and at Ottawa, indicate all too clearly that it is not always the electors who call the tune for our political parties.

We are all too prone to judge Beauharnois and similar incidents in accordance with our particular party stripe, but the problem of money in politics cannot be solved by castigating political opponents or excusing political friends. No more can it be solved by a mere outburst of moral indignation against particular offenders. Pleasing as it is to find scapegoats in such circumstances, it affords no guarantee that the old order will be thereby destroyed or that it will not be quietly

funds of Conservative candidates and to local Conservative organizers apparently in the city of Montreal, \$25,000 or \$30,000; to the Quebec Conservative party \$20,000, perhaps included in the previous total; to a person who, according to the president of the company, 'represented himself' as a collector for the Conservative Party in Ontario \$125,000. The recipient, however, denied to the committee that he was a collector, or that it had gone to the party in question, and contended that it was paid to him personally for services to the company. An agent for the federal Conservative party was declared to have refused a contribution, though \$200,000 was suggested (*Can. H. of C. Journals*, 1931, pp. 633-7).

restored once the storm has blown over. The public memory of wrongdoing is extremely short. The problem, indeed, is beyond parties and beyond personalities. The evil strikes at the very roots of Canadian democracy; it concerns all parties; it affects every citizen. If we are to remove it, we must profit by experience and take precautions for the future. This implies first an examination of the part money actually plays in elections.

Whatever may be said in defence of democracy, economy in hiring and firing Ministers of State is not one of its virtues. A Caesar can dismiss an unprofitable servant with a curt 'Away with him!' Democracy requires its servants and prospective servants periodically to display their qualities in an exhausting competition of speech-making, of dashing about in cars and special trains, of advertising in the press, by billboard, by pamphlet, and by radio, of personal interviewing and handshaking and baby-kissing.

This requires not only physical and nervous energy but money, sometimes pots of it. Within reasonable limits, expenditures for such purposes are necessarily incidental to discovering the people's will. Any one familiar with party work during election time in Canada and who keeps his eyes open knows well, however, that not all expenditures are made for such legitimate purposes. 'Treating' with liquor and other forms of refreshment is a widespread practice; in too many constituencies some electors at least regularly receive a 'daily wage' or lesser amount to turn out and vote—a plain euphemism for bribery; hiring cars to convey electors to the polls seems to be current from Atlantic to Pacific; and it is no secret that in many constituencies electors away from their polling division have little difficulty in getting their fares paid to return and vote. Though all these practices are forbidden under severe penalties by the Election Act, where local opinion tolerates them they are likely to be indulged in by both parties. When the public conscience sleeps and both parties are offenders, the law quickly becomes a dead letter.

The cost of elections seems to be continually mounting, though it is always difficult to obtain authentic figures. Among other contributing factors have been the extension of the franchise and the growth of population. Speaking generally, the wider the franchise and the greater the population to be reached, the greater the cost of elections. A more sinister influence has been the undoubted advantage to be derived from the possession of adequate funds, even if they are used only for legitimate purposes. Money counts, whether in advertising the virtues of a party or of a soap. A party without money is like an army without ammunition. Its cause may be just, its tactical position sound, its generals able, its rank and file courageous; but of what avail are these qualities alone against the high explosives, the airplanes, the tanks, and machine-guns of the enemy? Elections, like battles, are no longer won by prayers; victory tends to

favour the side with the most ammunition. A large campaign chest may give a party or a candidate a temporary advantage, but it drives opponents to seek a larger one. Thus campaign funds, like national armaments, tend to beget ever larger progeny.

Election expenses fall naturally under two heads, local and general. Upon the local candidate or the local political organization generally falls the burden of the contest in the constituency. This varies greatly according to local and temporary circumstances. J. S. Woodsworth, for example, declared recently in Parliament that his campaign in 1930 in Winnipeg North Centre cost less than \$600, while the Hon. C. H. Cahan declared some time ago that his campaign in a Montreal constituency in 1925 cost \$25,000 and in 1926 \$15,000, or in other words the average for the two campaigns was five years' salary as a Member of the House. Rumour often suggests a higher figure; as, for example, in the case of a recent provincial by-election in a Maritime province, which is said to have cost the winning party over \$100,000.

It is all too apparent that in most constituencies standing for election has become a rich man's game. The poor man, even the man with a good income but dependent on his earnings for his living, can scarcely venture to serve his fellows in public life without risking his independence. Unable to finance his own campaign, he is in danger of becoming dependent on those who can and will—at a price.

General party expenses, like local expenses, undoubtedly vary greatly. The Labour and Progressive parties have little expense outside the local contests, since to them a general election is fought as a series of guerrilla attacks to capture a few seats. The objective of the Liberals and the Conservative parties is, however, to capture office; that is to say, the control of the House of Commons. For them the battle extends to nearly every constituency from Cape Breton to Vancouver Island. Their fortunes depend, moreover, very largely on the personalities and activities of the party leaders. They must appear at strategic points along the battle-line, and their speeches must be broadcast throughout the Dominion. Campaign literature in enormous quantities on the general issues of the election must be prepared, and expensive advertising placed in papers with a wide circulation. And there are the continual calls for aid from candidates or local organizations, some of which at least it is expedient to answer. As to the size of central funds, the public is in the dark, yet it is significant that the Ottawa *Journal*, a paper close to the present Administration, declared recently, 'No political party can enter an election in this country to-day without a central fund of at least \$1,000,000—for perfectly proper purposes.'

The problem of raising the necessary funds faces local and central organizations alike. If the local organization can find a candidate who can pay his own way, its task is solved, and there is every reason

to believe that such candidates are usually preferred. Failing this, it must raise assistance from other sources. The soundest method socially for raising local and central funds is undoubtedly to raise both in small sums from the rank and file of the party. Then only can a party claim to be democratically controlled, and then only will it be freed from the menace of secret external or internal control by the few who furnish the sinews of war.

In this respect Labour and Progressives are nearest the ideal, since funds, apart from the contributions of the candidate himself, are normally raised in small contributions from many supporters. The Liberal and Conservative parties, on the other hand, have never educated their rank and file to assist the party financially. For them the traditional source, alike for central and local funds, has been not the average supporter but the few individuals or interests which have profited or expect to profit from the success of the party. The contractor who has obtained or wants Government contracts, the manufacturer who has benefited from a rise in the tariff or who wants a rise or fears a drop, the capitalist who has been granted or wants the right to build a railway or exploit a timber limit or a water power or a mine, even on occasion the individual who has been appointed to a post on the public pay-roll—all are regarded as fair game for the collector of campaign funds, whether national or local. No doubt many contributions are made by individuals out of party loyalty, but the unit of measurement for contributions too often is not party loyalty but private gain.

The Liberal and Conservative parties alike have become pensioners of selfish interests. The demoralizing tendencies of such a system are obvious. A party dependent for its success on external or internal interests which it may impoverish or enrich, can no more be expected to take an unbiased view of public policy when those interests are affected than a judge can be expected to dispense even-handed justice if he takes a gift from a litigant.

Vicious and anti-social as the system is, we have taken no pains to prevent it. As regards campaign funds, our election law is virtually the same as the first Dominion Election Act of 1874, which followed in this respect the English Act of 1854. In 1854 the franchise was yet limited, party organization scarcely existed outside Parliament, and the individual Member of Parliament had not yet become a mere cog in the party machine. Seeking to control election expenditures, the English Act of 1854 naturally fastened on the funds of the individual candidate. But politics have moved on since that day. Since then, extension of the franchise has made necessary an elaborate party organization outside Parliament. In Parliament the great parties have become disciplined teams, the average member of which is important solely because he can be counted on to vote as his leaders dictate when the division bell rings. And the enormous central funds of the party

overshadow in importance those of the individual candidate because of the influence they may exert on public policy as well as on the success of the party.

Yet while politics have changed, the law has not. Speaking generally, the law does not recognize the existence of political parties; it still speaks in terms of individual candidates. Though there are elaborate provisions as respects the campaign funds of individual candidates, there is not a line on the statute books referring to the central funds of the party. This is the law's cardinal defect. We might as well try to regulate highway traffic bylaws drafted before the advent of the automobile.

From 1908 to 1930 the law did make a half-hearted attempt to reach party funds by prohibiting contributions for the support of a candidate or a party from associations or corporations other than those incorporated for political purposes. Said Sir Henry Drayton in discussing this prohibition in the House of Commons some years ago:

Is there any honorable member in this House so foolish as to think that contributions are not made to election funds? Why, of course, they are made. . . . Everybody knows also that this country has yet to find a single prosecution. The law is a dead letter. . . . It has never been enforced, and there is no intention of enforcing it to-day.

The real difficulty was that so long as party funds remained secret, it was virtually impossible to trace contributions. The law was, however, a handicap on Labour and Progressives, since, however easy it was to conceal contributions from a business corporation because its books were not open to the public, it was relatively difficult to conceal contributions from a semi-public organization such as a labour union. Under Labour and Progressive criticism of the unfairness of the law in practice, the Government consented to repeal, and repeal went through Parliament without opposition in the closing days of the session of 1930, that is, just before the election. It would be interesting to know how many members had their tongues in their cheeks as they voted for repeal. At any rate, repeal opened wide the door for the contributions from Beauharnois and similar sources.

The law is not adequate even as respects individual candidates. In the first place the candidate is limited to a personal expenditure of \$500; for handling all other expenditures he must appoint an agent. The amount which an agent may receive or spend on behalf of the candidate is, however, unlimited. Within sixty days after the election the agent must file with the returning officer a return of all receipts and expenditures over \$10, including the personal expenses of the candidate. Failure to file a return within the time limit is an illegal offence and will debar a successful candidate from sitting in Parliament; or, if he sits, it will subject him to a fine of \$500 a day for every day he sits, the same to be forfeited to any one who sues therefor. Within ten days of the return of expenses the returning officer is

required to publish, at the expense of the candidate in a paper circulated in the constituency, a summary of the accounts. He must hold the accounts for at least six months, during which any elector may examine them on payment of a nominal fee.

The idea behind this regulation is to secure publicity. Its fundamental defect is complete lack of responsibility for enforcement. If the agent fails to make a return, the returning officer has no authority to compel him to do so. If he does make a return, there is no one responsible for scrutinizing or examining his accounts. As for the publicity secured through publication, a summary in an obscure corner of an inside page in a small town daily or weekly is a mere farce. Nor is the right of an elector to examine the accounts of any consequence. What is every one's business is nobody's business. Only active party workers are interested, and both sides are anxious to hush up the whole question of campaign funds after an election. A further serious defect in enforcement is that security of \$500 for costs must be deposited by any person alleging irregularities; and few electors, however concerned about electoral corruption, are willing to risk their own pocket-books to such an extent, especially in view of the great difficulty of proving irregularities.

The working of the law is illustrated by events in four constituencies in Nova Scotia after the election of 1930. The four constituencies in which the writer sought to obtain information on campaign expenditure return five members to Parliament. The information was sought early in January, that is about five months after the election and three months after the return of accounts was required to be made by law. Only four of all ten candidates apparently made any return; these included three successful and one unsuccessful candidate. The other six, including two successful and four unsuccessful candidates, apparently had made no return at all. Published returns were all in lump sums and virtually valueless. In every case, the writer was informed, no other request had been made to see the returns. These incidents are perhaps not a fair sample since enforcement of election laws is notoriously lax in Nova Scotia, but there is good reason to believe the law is widely flouted throughout the Dominion.

The fact is, both old parties live in glass houses. If election laws were suddenly enforced without warning after an election, the House of Commons might be without a quorum, and in several provinces the janitors might find it unnecessary to unlock the doors to the provincial legislative chambers.

A brief comparison with contemporary English and American electoral laws will indicate how far out of date is our election law. English electoral law places a definite limit on the amount a candidate may spend. In urban communities it is fivepence, and in rural communities sixpence, per elector on the register. Returns of each

candidate's accounts, including contributions and expenditures, must be forwarded to the chief electoral officer, who submits to Parliament a report covering the expenses of all candidates. One important feature of the English law is the prohibition of any expenditures in a constituency except by the candidate or his official agent. A few prosecutions for expenditures by private persons seem to have had the desired effect. Competent observers of English electoral practice report that there is now little violation of the law in this respect. The weakness of English law is, however, its refusal to recognize the central funds of the party, hence the public is still in the dark in Great Britain as regards central funds, except in the case of Mr. Lloyd George's party which has voluntarily made public its accounts for the last two or three elections. There seems to be a growing demand in Great Britain for full publication of central funds.

American electoral laws, on the other hand, have been radically reformed within recent years in both federal and State fields with a view to getting at central party funds. In many States there are now laws requiring an accounting of campaign funds of both parties and candidates for State elections. A second requirement now becoming very general is that of a maximum limit which may be spent by a candidate for a particular office. In the federal arena, publicity began voluntarily in the Presidential election of 1908, when both the Democratic and the Republican parties began to endeavour to excel one another in virtue by publishing all contributions as they were made. In 1910 publication was made compulsory, and maximum limits for expenditure for candidates for both Houses were set by law. Unfortunately, however, the Supreme Court found the statute unconstitutional in so far as it related to primary elections for Congress, and primary elections are still unregulated by law, except where the State has co-operated by enacting State laws on the matter. Vigorous legislative investigations from time to time have, however, shed much light on expenditures in Congressional primary elections as well as in regular elections. While the problem of money in elections is not yet completely solved in the United States, careful students of American politics generally agree that much progress has been made, and that the general effect of such legislation has been to lessen electoral corruption to a very appreciable extent.

If Canadian political parties are to become real instruments of public welfare rather than tools of private interests, drastic changes must be made in our election laws. It must of course be recognized that in the last analysis electoral laws, like other laws, depend for their enforcement on alert public opinion. But, while we must beware of relying too much on law and not enough on opinion, we can no more depend for electoral purity on opinion alone, however alert and intelligent it may be, than we can for the prevention of crime. As a beginning, we may assume that the great mass of Canadians want no

more Beauharnois episodes; the problem is, what legal safeguards should be taken?

Three principles should guide reform. In the first place, secrecy of central party funds must be abolished and publicity assured. Secondly, responsibility for the handling of campaign funds must be concentrated in as few hands as possible. And thirdly, enforcement must be made as easy and certain as possible.

The first step in reform must be the recognition by our law of the existence of political parties. The situation is beyond control if electoral laws continue to ignore the most important institution of modern democracy. It is fatuous to attempt to regulate the candidate alone. It may be necessary to compel our political parties to incorporate as national or provincial organizations or both, but this is a minor technical question. The primary problem is to bring under the control of law the actions of the agent or agents of the party who collect and dispense the sinews of war. He must be compelled to give an accounting both of receipts and expenditures. Nor is a mere statement drawn up by the agent and handed to the press at all adequate. A Sunday school takes greater precautions with its funds. To be of value, an independent audit should be made and certified by a chartered accountant and a report made to the Chief Electoral Officer, who should be required to submit the report to Parliament.

Similar requirements should be enacted for the accounts of individual candidates. Accounts should in all cases be audited by an independent auditor, submitted to the returning officers, and thence through the chief electoral officer to Parliament. Only thus will there be any assurance that accounts of agents and candidates are correct and publicity properly secured. And, of course, it goes without saying that drastic penalties should be provided for falsification of accounts and for failure to submit accounts.

Further securities should be provided in order to assure that contributions are bona fide from the individual credited therewith. A common practice to-day is to credit individuals with contributions made by others, the object being, of course, to hide the real source of the contribution. One means to guard against this would be to require of every contributor, or at least every contributor of an amount beyond a fixed minimum, say \$100, a signed declaration that he made the contribution voluntarily from his own funds, and that it was not as a result of gifts or other consideration received or expected by him from others.

Secondly, responsibility for handling all party funds must be secured by law. In the case of campaign funds in support of individual candidates the present law is tolerably satisfactory in that it requires all expenditures, as well as all contributions, to be made through the candidate or his agent. The difficulties lie with enforcement, of which more hereafter. Similarly, all contributions and expenditures for the

party as a whole should be made through a properly authorized agent or official of the party, who should be responsible by law for their custody and proper use. As has already been indicated, he should make detailed reports, certified by independent auditors, of all receipts and expenditures; and, as in the case of the candidate's agent, he should be personally liable and the party penalized for misuse of such funds with his knowledge and consent.

A still further safeguard is required. It is to-day tolerably easy for individuals or corporations interested in an election to spend money in support of a party, as for example by means of advertising, without in any way coming in conflict with the law. This practice is no doubt difficult to stamp out, but an effort must be made to do so, otherwise we shall never satisfactorily control expenditures. It would be advisable, therefore, to prohibit all such expenditures in the interest of the party. This is the case at present if aid of this sort is given to the individual candidates.

And finally, enforcement, probably the most difficult aspect of the problem. Our present electoral law, as has been pointed out, lays the burden of enforcement primarily upon the individual citizen, who must deposit \$500 as security for costs before inquiry into election irregularities will begin. Not every public-spirited citizen has \$500 in cash or securities available for deposits with a court even if he is relatively certain the charges he makes can be proved. It is, of course, advisable that prosecution should not be begun or charges made for malicious or partisan reasons, but it is equally desirable that the citizen should not be penalized for the failure of an inquiry into irregularities which he bona-fide believes to have been committed.

The first step must be, therefore, the removal of this handicap. In this connexion, a recent Wisconsin law is in point. It permits a petitioner to apply to a county judge or higher judicial officers for leave to institute proceedings and for the appointment of special counsel by the Court. He deposits no security for costs; nor is he assessed for costs for mere failure to prove his charges, but only if it is shown that he has instituted proceedings otherwise than in good faith. A similar provision might well be extended to Canada, and the honest citizen thereby encouraged, rather than discouraged as at present, to secure enforcement of the law.

It is doubtful, however, whether this is enough, and whether the individual citizen should be left to enforce a law, the enforcement of which is likely to affect him only indirectly. So long as our personal interests or our private rights are not affected, most of us have normally little concern with the enforcement of the law. Would it not be preferable, therefore, to lay at least some of the responsibility for enforcement upon public officials?

We have already taken our electoral officials partly out of party politics. The Election Act of 1920 created the office of the chief

electoral officer, who is appointed by and responsible to Parliament rather than the Government of the day. He was given a tenure of office of ten years, during which he could only be removed like a judge of a Superior Court, that is, by address of both Houses of Parliament. More recently the returning officer, the principal electoral officer in each constituency, was made a permanent official and his appointment and, apparently, removal laid upon the chief electoral officer. These officials—the chief electoral officer of the Dominion and the local returning officers—might well be used for purposes of enforcing publicity of accounts. In the first place, they should be given compulsory powers to enable them to compel candidates and parties to make returns of their accounts. In the second place, the chief electoral officer should be required to examine and pass upon the sufficiency of accounts rendered, to report any omissions or insufficiencies to Parliament, and, as at present with regard to other phases of the Election Act, to report to Parliament any other matters he might think fit together with recommendations for appropriate action.

It is not expected that these changes will bring about a political millennium. It is believed, however, that they would go a long way towards freeing Canadian parties and the people of Canada from the incubus which now hangs over them. Other reforms might be suggested, such as limits on contributions, or on expenditures, or prohibition of contributions from such sources as Government contractors or corporations. But it is probable, however, that if publicity of all receipts and expenditures were assured, limits would more or less take care of themselves, and so too would contributions from questionable sources. 'Tainted' money might be expected to lose as many votes as it would gain, provided the public knew its source. The immediate problem is to assure that those who pay the party piper shall be made known. Some day perhaps the rank and file of the party may learn that it is to their advantage to pay the piper themselves. Then only will they be certain that they and no others call the tune.

III

PROCEDURE

A. ADOPTION OF THE CLOSURE, 1913

(*Canadian House of Commons Debates*, April 9, 1913, pp. 7389-407.)

(In 1912-13 the Borden Government presented its naval policy to Parliament. The resolution, introduced on December 5, 1912, called for an emergency grant of \$35,000,000 to the British Government to provide three battleships or armoured cruisers. The measure was bitterly opposed by the Liberals, who advocated a permanent policy of a Canadian navy, and who also contended that an issue of such

importance should not be decided without an appeal to the people. In order to force an election, the Liberals began to obstruct the business of Parliament—tactics which reached a climax in a continuous session of two weeks. The Government with some reluctance introduced and passed the closure (cf. *Standing Orders of the House of Commons (Canada)*, 1927, Orders 28, 38, 39) and then put the Naval Bill through the House. It was later defeated in the Senate.)

Rt. Hon. R. L. BORDEN (Prime Minister): Mr. Speaker, the resolution which I have the honour to move this afternoon touches a very important subject, because it must be apparent to all hon. gentlemen in this House that unless we have such rules as permit the reasonable transaction of public business, and prescribe the ordinary and proper conduct of debate, Parliament must fail in its chief function, and the proceedings of this House are liable to be brought into disrepute and contempt. No one is more ready than I to acknowledge that liberty of speech and freedom of debate must be preserved, but I venture respectfully to suggest that these privileges must be observed and maintained under such conditions that they shall not be allowed to degenerate into licence and obstruction. During the past sixteen or seventeen years, since I have been a member of this House, there has been a great deal of discussion with regard to the amendment of our rules. From time to time changes have been made in those rules, but they are still in a form which I think every hon. gentleman in this House, without distinction of party, will admit does, nevertheless, permit a much smaller number of hon. gentlemen than are usually comprised in the minority of the House actually to prevent the transaction of any public business. Let us look for a moment at the conditions under the present rules, and let us take the case of an ordinary Bill preceded by a resolution. I have asked the officers of the House to make up for me a statement as to the several stages at which debate and amendment would be permitted, and I find that, in the case of such a Bill as that to which I have alluded, there are no less than nineteen different stages including the committee stage, at which it would be possible for every hon. gentleman in the House to debate and discuss that particular measure, and I believe that at every one of those stages it would be possible for any hon. gentleman to move amendments to the measure. I shall leave out of consideration for the present the committee stage; to that I will allude in a moment, but if hon. gentlemen will take the eighteen stages exclusive of the committee stage, and add to these all the amendments that are possible, they will readily see that there may be, when the Speaker is sitting in the Chair, fifty or sixty or seventy different motions which every hon. gentleman in this House is at liberty to debate to the fullest possible extent, and at such length as shall seem to him desirable. It is perfectly obvious, it seems to me, that such conditions cannot possibly result in the efficient or satisfactory transaction of public

business, particularly if a certain number of hon. gentlemen—even though they may comprise a very small proportion of the members of the House—are disposed to oppose the transaction of that business. If you add to these stages the period during which the Bill is in committee, when every hon. gentleman in the House is at liberty not only to speak, but to do so as many times as may please him, it will, I think, be apparent to every hon. gentleman in this House, and to every intelligent and reflecting man in the country, that the transaction of public business in those cases becomes impossible, unless you have a convention—what one might call closure by consent—between the parties, so that, at a particular stage, the debate, however lengthy it may have been, shall at last come to a close, and the majority of the House shall be permitted to express their opinion by a vote upon the measure under consideration. . . .

How has it been possible for Parliament since 1867, under the conditions which I have described, to transact public business? It has been possible, as I understand it, simply by means of what I might call closure by consent. That is to say, at a definite stage in a debate, when, in the judgement of the leading men of both sides of the House, it has proceeded far enough it has been the practice for a consultation to be held and a date to be fixed; and members who are not able to catch the Speaker's eye within the period so fixed are, by arrangements made on both sides of the House, practically excluded from taking part in the debate on that subject and the question is brought to an issue in that way. The difficulty has arisen in the past and arises to-day that conventions of that kind, which have in the past to a considerable extent obviated the necessity of any stronger form of rules, are not observed and therefore, not being observed, are not operative. I think the situation is very well expressed in an article which appeared in the *Fortnightly Review* in 1881, over the signature of Mr. Frederick Pollock, in which he made the following observations in regard to conditions in the British Parliament:

The positive rules of debate are so framed as to leave an immense latitude to members and give immense opportunities for delay. They were framed and long acted upon, on the assumption that members of the House of Commons would behave themselves as reasonable men and gentlemen, and would not obstruct public business for obstruction's sake. But in the last two or three years certain ingenious members have invented the policy of obstruction for the set purpose of bringing the whole proceedings of Parliament to a dead-lock, and thus intimidating the House into compliance with their demands. What is the result of this? After all the House is master of its own rules, and will not allow them to be notoriously abused. A new rule has already been made; and if that is not found effectual, we cannot doubt that other and more stringent measures will be taken. The understanding founded on trust having broken down, positive regulation becomes needful.

I do not desire in the course of my remarks to call attention more than may be necessary to observations which have been made in this House during the present session as to the inadequacy of the rules, but it is certainly apparent to all of us that hon. gentlemen on the other side of the House have called our attention to this absurd condition in a very marked way indeed, and we have been told that the Government of this country is practically helpless, although it has a majority of forty-five in the House, who are ready to vote on measures after reasonable debate and to pronounce the verdict of the House upon them. . . .

. . . What we have sought to do is to provide that all substantial motions, which bring into question the propriety of passing any Bill, measure, or vote, shall be debatable in the future as they have been in the past, but that purely formal motions, which, under the existing rules, would be used only for dilatory purposes, shall not in future continue to be debatable. That has been our object, and we propose to carry it into effect in a reasonable way.

. . . In the first place, it seems to me that this rule may operate in Canada—and I speak to my hon. friends on the other side of the House with perfect frankness—as it has operated in many countries in the world, that is to say that the mere existence of the rule will itself prevent the necessity of its being brought into practice, at least very frequently.

. . . I would think that if this rule passes, things might go on in the future just as they have in the past. I would always ask my right hon. friend what length of time he desired to conclude any particular debate, and I would hope that in the future we would be able, as we have been in the past, to come to some conclusion without invoking these rules. I would hope that would be the case. I am not disposed, as I think even my hon. friends on the other side of the House will admit, to use unfairly any power that I might possess. I would think that any reasonable doubt as to the time within which a debate should be concluded ought to be resolved in favour of the minority. I will go so far as to say that. The object of bringing these rules into force is not for the purpose of repressing the minority or taking away the right of liberty of speech, but purely for the one overmastering reason, namely, that the Parliament of Canada may not become a byword and a reproach, and that it may be able to transact public business.

. . . It is proposed that the power which is to be exercised under this section shall be exercised upon the responsibility of a minister of the Crown who, standing in his place, shall give notice at any sitting that he will, at a subsequent sitting, move that the debate shall not be further adjourned or that the consideration of any measure in committee shall not be further postponed. When that takes place what happens? Under the rules, as I understand, this will happen, that whether the House be sitting with the Speaker in the Chair or in

committee, no member shall thereafter speak in such adjourned debate or upon such further consideration more than once or for a longer period than twenty minutes; and it seems to me that the practice of reducing speeches to that length of time, upon notice to the minority of the House, ought to enable them to concentrate their fire more effectively than they are apt to do under the present rule, upon the exact portion of a Bill or measure to which they are opposed.

B. 'OUR UNREGENERATE COMMONS'

(George Hambleton in *Dalhousie Review*, October, 1928, pp. 316-20.)

In that spirit of deep contrition which legislators now and again love to assume, the Canadian House of Commons, forty-two years ago, passed a resolution. It was a resolution of piety and of promise. It deplored. It abjured. Indeed, it did almost everything but redeem.

But let me quote the resolution as it stands in the somewhat prosaic pages of Beauchesne, right beneath the new forty-minute rule:

That the growing practice in the Canadian House of Commons of delivering speeches of great length, having the character of carefully and elaborately prepared written essays, and indulging in voluminous and often irrelevant extracts, is destructive of legitimate and pertinent debate upon public questions, is a waste of valuable time, unreasonably lengthens the sessions of Parliament, threatens by increased bulk and cost to lead to the abolition of the official report of the debates, encourages a discursive and diffuse, rather than a concise style in public speaking, is a marked contrast to the practice in regard to debate that prevails in the British House of Commons, and tends to repel the public from a careful and intelligent consideration of the proceedings of Parliament.

All that in one long breath of 125 words.

Since those loquacious days, various royal roads have opened their seductive way to the golden silences. A closure rule was born of the blockade over the Borden Naval Bill. Speeches, except of the select few, have been cut to forty minutes. The right to load the order paper with private members' motions has been severely curtailed. The all-night sitting has been consigned to the shelf, there to repose with the lone bat of the imaginative journalist (or was it the early bird) which would insist on flitting round the Chamber just as the first streaks of dawn cast a spectral light over the dreary scene.

Yet, with all these changes, with all the revised rules now in operation, the plain fact remains that our Commoners are both unredeemed and unrepentant. They are loquacious. They are discursive. The new rules have done something, but they have not brought a new heaven and a new earth. We still lack that 'incisive and concise style' for which the resolution of 1886 yearned through 125 breathless words. 'I want to know'—so ran one gem of precise thought last session—'I want to know if the Government is going to do anything

to conduce to the resuscitation of the implementation of the dumping clause.'

Even with the clock imposing its inexorable forty minutes, members frequently wasted precious time in saying what somebody else had already said half a dozen times. And the odd thing about it was that those who wasted time most were generally those who complained that forty minutes were not enough in which to develop an argument. Now, at a moderately fast rate of speaking, forty minutes are about equivalent to six thousand words, or say five columns of an ordinary newspaper. After having heard some hundreds of speeches at Ottawa, I fail to recall one—except possibly Government outlines of negotiations involving the reading of much correspondence—of which the argument could not be adequately stated in five newspaper columns. As a matter of fact, the ordinary member who gets a column report of his speech through the newspapers of the country is doing remarkably well. And the newspaper report is about all that reaches the great mass of the electorate.

Mr. Robb is the one member of the House who has learned the importance of being concise. His budget speeches rarely run much more than forty minutes, although the forty-minute rule does not apply to a budget speech. Mr. Robb, indeed, might well serve as a model not only to the back-bencher, but to some of his own Cabinet colleagues. One illustration comes vividly to mind. It is that of a Cabinet Minister whose speech was awaited with more than ordinary interest. He spoke to an attentive House. Thirty-five of his forty minutes were devoted to generalities which could have been adequately stated in five. He had just reached the point for which the House was waiting when his speech was abruptly ended by the clock. In a few minutes more than his colleague had wasted on generalities, Mr. Robb had made his whole budget speech.

But while the style of speaking in our Dominion House is far from being beyond reproach, it would be unfair to regard its general level as being so far below the general level of Westminster as the resolution of 1886 might lead one to believe. During his visit to Canada last summer, Mr. Baldwin delighted many hundreds of thousands of Canadians with the sweet and simple phrasing of which he is a master. But Mr. Baldwin is not typical of the British House. All British Ministers have not mastered English as Mr. Baldwin has mastered it. As a journalist in England, I have heard noble lords speak in language neither noble nor eloquent.

There is indifferent speaking at Westminster, but there is less verbosity than at Ottawa. The difference between the two Houses lies rather in methods. Westminster, overwhelmed with business, has apparently endeavoured to cope with its problem in two ways:

1. By the adoption of more rigid forms of closure.
2. By frank recognition of the fact that if Parliament is to transact

its business within a reasonable time, it must be something more than a mere debating society.

Two instances will serve to illustrate the difference in method.

Rather more than four years ago, I was in the British House for an announcement by Mr. Baldwin that Parliament was to be dissolved. The announcement and subsequent debate were momentous. They preceded defeat of the Baldwin Government and the advent of the first Labour Government in Great Britain. Conservatives, Labour, Asquithians, and Lloyd Georgians had their say. But they said it briefly because, obviously, nobody wanted to hear numerous speeches. I was there only about three hours. But the debate was over, and the House had passed to other business before I left.

Compare that with our last budget debate at Ottawa. Mr. Robb, as I have already pointed out, presented his proposals in about forty minutes. Neither the most ardent Liberal nor the most ardent critic would call those proposals momentous. Yet the ensuing debate dragged on from February 20 to March 13. It monopolized eighteen parliamentary days. One hundred and twenty-three speeches repeated threadbare arguments *ad nauseam*. Talking for the constituency! Going on record in Hansard! In such luxury, three valuable weeks of parliamentary time went by the board. And while 123 speakers talked and talked, other business had to bide its time.

But it was the failure of three important Bills to come to a final vote in the Commons last session which, as much as anything, perhaps, demonstrated the need for changes in our methods of handling parliamentary business. The Bills were: The Sun Life and Bell Telephone Bills and the Bill to establish divorce courts in Ontario. It is not my intention to express any view whatever on the merits of these Bills. They have their own apologists. They have their own critics. It is quite likely that, had they come to the final test, the Bills would have been either amended or rejected. The point I wish to emphasize is that the Bills met their doom not because of the expressed will of an adverse majority but because (in regard to the Sun Life and Bell Telephone Bills at any rate) a few members by the simple process of talking out were able to prevent the House as a whole from expressing any will at all. Rather frantic resort to the previous question availed little in the long run. Rarely used at Ottawa—although there is provision for it in the old rules—the previous question caught some members napping. They saw speech-making dramatically closed, only half-understanding how. But it was not long before loop-holes were discovered. The effect of the previous question is sweeping. Once adopted, it ends debate there and then. It closures out all subsequent amendments. But it does not closure out previous amendments of which due notice has been given. It ends debate but is itself open to debate. Divisions may be challenged, and our method of taking recorded divisions is slow. There are only two hours per week

allotted to private Bills towards the end of the session. And if there is one thing the promoter of a private Bill learns at Ottawa, it is how remarkably fleeting sixty minutes may be. A group of determined talkers-out have things pretty much their own way.

The Bill to establish divorce courts in Ontario originated in the Senate where, early in the session, it received final reading. It went through preliminary stages in the House, then, forlorn and almost forgotten, it advanced no farther for the simple reason that it was never reached. The situation was such that the august Senate even was led to revolt. A few days before prorogation, Senator W. B. Ross, Opposition leader in the Upper House, gave notice that if the Bill were rejected by the Commons, then Conservative Senators would ask members of the Lower House to hear one-half of the petitions for divorce. If, on the other hand, the Commons did not deal with the Bill, then Conservative Senators next session would not sit on the divorce committee—except to hear petitions from Quebec.

To this virtual ultimatum, the Commons paid no heed. The Bill remained on the Order Paper where it was. It just fell by the wayside.

If the Conservative Senators now give effect to their threat, applicants for divorce from Ontario will find new difficulties in the path to freedom. To the risks always attendant on private legislation, there may be added the problem of securing a quorum in the divorce committee.

What I have written indicates, I think, that the House had before it a problem of magnitude. Its prolixity still requires the curb. If it is to finish its business in reasonable time, its methods must be made more business-like.

How and by what means is that end to be attained?

To state a problem is fairly simple. To find its solution is another matter. But, from the vantage point of the independent observer, I submit that a remedy is most likely to be found along one or more of these lines:

1. Allocation of more time to private business.
2. Creation of a special committee on estimates.
3. Revision and extension of the closure rules.
4. Concerted effort on the part of members to cut out vain repetitions and get down to business.

No method adopted will be found free from fault. Changes in rules or procedure must have behind them the goodwill of members if their purpose is to be accomplished. Additional time for private business will be of little avail if members waste it on academic discussions of little practical utility. A committee on estimates (already promised by Mr. Mackenzie King) can relieve the House of much of its present rather picayune discussion in supply. But no advantage would be gained unless the additional time is devoted to the advance of matters of moment.

Adoption of closure by compartments (i.e. placing a time limit on a clause or group of clauses) such as adopted at Westminster may in the long run have to be adopted at Ottawa. But it has not been found perfect at Westminster, nor will it be found perfect at Ottawa. Closure has its uses, and there is little doubt we shall see more and more of it in our Dominion House as the years go by. Its abuse is as dangerous as the malady it seeks to remedy. In England, much authority under closure is left to the Speaker. Similar extension of our Speaker's authority may be found necessary if the scope of closure is to be extended in the Dominion House.

Taken all in all, what our House most needs is a common will to get through business promptly and efficiently. Given that, the problem of unnecessary delays will solve itself. Failing that—and human nature is just human nature after all—our methods of handling parliamentary business will have to be changed.

C. THE REFERENCE OF ESTIMATES TO SELECT COMMITTEES

(*Canadian House of Commons Debates*, March 12, 1930, pp. 527-37)

Mr. W. T. LUCAS (Camrose) moved:

That, in the opinion of this House, the estimates should be referred to select standing committees before being submitted to the committee of the whole.

... I think it is recognized by every hon. member of the House that the present system of dealing with the estimates is far from satisfactory. With our tremendous debt and our annual expenditure continually growing, anything that will enable hon. members to vote supply in a more intelligent and businesslike way, so as to take care of the needs of an expanding country, should be welcomed by all parties in the House. It is estimated that two-thirds of our expenditures are uncontrolled, which is all the more reason why we should give the very closest scrutiny to the small portion over which we have control. I believe that the adoption of the resolution which I have introduced this afternoon will not only effect an economy in expenditure but it will effect also an economy in the time of the House. It would affect also the expenditures made for political purposes. We know that charges are made nearly every session that certain expenditures are made for political reasons, and no matter which party was in power, I feel sure that if the Ministers in charge knew that their estimates were to go before a special committee they would be very careful about placing in those estimates anything of a political nature. . . .

The procedure which I propose has worked very satisfactorily in connexion with the estimates for the Canadian National Railways, and the Canadian National Steamships. The officers of the department are present in the committee, and those estimates are thrashed out in a free and open manner, and considerable time is saved in the

House when the estimates come up for consideration by the committee of the whole. The same result would obtain with the estimates of other departments. Members of the House could appear before the committee where the officers and engineers of the department would be present to give full and complete information. In that way the members would be more fully informed when the estimates came before the committee of the whole, and the estimates would be passed with a great saving of time. As members of Parliament we are trustees of the people's money, but under our present system we do not have the information to enable us to vote intelligently upon matters concerning expenditures for which they have to assume responsibility. . . .

Rt. Hon. W. L. MACKENZIE KING (Prime Minister): . . . If my hon. friend is prepared to make his resolution a little general and for the word 'estimates' to insert the words 'certain estimates' and to make it read 'a special committee or select standing committees' instead of just 'select standing committees'—and I think he would be agreeable to doing this—the Government would have no objection to having the resolution carried and, in fact, its members would be prepared to support it. I would wish, however, to make perfectly clear that hon. members are free to vote as they please and also note what the Government has in mind in having it made possible to refer estimates to a select standing committee, is simply to provide means whereby hon. members can get more in the way of detailed information with respect to the estimates than is generally possible when we are discussing them in the committee of supply. We believe a great deal of time might be saved if estimates went before either select standing committees or a special committee for the purpose and were considered there, but there would have to be the distinct understanding that in no particular was the right of any member to discuss any or all of the estimates restricted in any way when they were before the House in committee of supply. I think it should be made quite clear that so far as the committee of supply is concerned, its rights or the activities of any of its members would not be restricted in any particular. . . .

Hon. CHARLES A. DUNNING (Minister of Finance): I find that in Great Britain the creation of an estimates committee has been discussed for upwards of fifty years. In 1912 such a committee was set up. It did not function at all effectually due to the outbreak of the War, and it was not until 1921 that a general debate on the subject took place in the British House of Commons. . . . The result of that debate was to set up a committee to function under somewhat elaborate regulations. . . .

The evolution, as nearly as I can follow it, of the committee on estimates in Great Britain is that it has ceased to function with regard to reporting to the House with respect to the estimates of any particular department in any particular session, but has evolved rather along

the lines of trying to cover in its investigations all departments successively, reaching the same department again in a period of about four to five years, and making an exhaustive examination of each department, its manner of preparing estimates, suggestions of economies which might be developed, but not discussing matters of policy at all.

Mr. BENNETT: Nor items of estimates.

Mr. DUNNING: Nor items of estimates; but departmental administration generally, and reporting, not to the House, but to what are described as the Lords of the Treasury, which of course means to the Government.

Mr. BENNETT: Like our Auditor-General's report.

Mr. DUNNING: . . . It has evolved into a committee of the House having for its function the examination continuously of the detail operations of the departments of the Government, with power to call the officers of those departments before it from time to time, and to report to the Government its observations upon the economics of the public service. That is really what the British estimates committee has evolved into, and therefore it is a different thing from what is contemplated in this resolution. I do suggest, however, that this experience on the part of the British Parliament points at least to the desirability from our point of view of having the committee on standing orders carefully consider what rules should be adopted for the committees proposed in the resolution now under discussion before we are called upon to extend powers to committees to deal with the estimates. . . .

Hon. R. B. BENNETT (Leader of the Opposition): Mr. Speaker, the motion before the House contemplates the setting up of a special committee to consider estimates for the current year, that is, estimates that might be referred to such a committee. All estimates, alike in Great Britain and here, are submitted with a message, and the Government of the day, being responsible for the raising of the necessary revenues of the country, must, in the final analysis, assume the responsibility for the expenditure. All a committee could do would be to examine into the circumstances under which an estimate was made. It could not determine the question of policy, and it certainly could not lessen the estimate, neither could it increase it.

Mr. DUNNING: That is right.

Mr. BENNETT: That is perfectly clear. I was under the impression at one time—and I see that the right hon. the Prime Minister (Mr. Mackenzie King) is of the same mind with respect to it—that this committee in the English House of Commons had wider power than it in fact has, and he and I discussed the matter with one of the British Ministers at one time for the purpose of ascertaining what the powers of that committee were. In this country, the only effect that I can see of such a committee being set up, would be (*a*) to enable the

committee to ascertain the circumstances under which a given estimate appeared in the estimates; (b) to determine whether or not the amount indicated would be sufficient for the purpose of meeting the proposed expenditure; and (c) any other circumstances that might be relevant to such an inquiry. But it could not deal, as I have said, with either a question of policy, nor yet could it lessen or increase the estimate.

Under the circumstances, the only utility of such a committee would be to save the time of this House, and that would involve the taking of the notes of evidence, the printing of them, and the submitting of them to all the members of this House, in order that they might read them and govern themselves on the circumstances before the estimate came up in the committee of supply. . . .

Here we have set up a special committee for the purpose of making inquiries with respect to our national railway system. That special committee is a committee that makes very detailed inquiries as to projected expenditures, but it can serve no great purpose, for this reason, that the estimate of the Minister has been made upon the recommendation of the officials before it goes to the committee, and all the committee can do is merely to record—and it always does—its acquiescence in the action of the Minister, based on the recommendation of the management. What is really necessary, if we are going to deal with that at all, is that there should be an antecedent inquiry before the estimate is made, because once the officials of the railway make their recommendation, and the Cabinet accepts it, it is generally assumed that they have given it the best consideration possible, with respect to the recommendations and with respect to the expenditure. I might cite, for example, the case of the Montreal terminals last year. Some of us thought that further inquiries might be desirable or necessary. The Government had before it all the information it was possible to have, to enable it to determine whether or not the recommendations made by the railway officials should or should not be made effective, and in the light of the information given, the Government concluded to give effect to the recommendations of the officials, and placed in the estimates the necessary money to enable the undertaking to commence.

Now, the idea, I take it, that is in the mind of the hon. member from Camrose (Mr. Lucas) is as to whether or not an antecedent inquiry might not be possible so that the recommendations made by officials might be tested by the committee, and the Government would have the advantage of the testing of those recommendations by a committee to enable it to determine whether or not the expenditures should be made. The question in the minds of some of us at least, was whether or not it was possible, in a country where you have expenditures on the basis we have in this country, to set up a committee on estimates that could adequately deal with the situation, with the constitutional limitations imposed upon it. I am bound to

say, in the light of the knowledge I have, and the information I have, it places me greatly in doubt.

That is as far as I am prepared to go, but I might add one word. I do believe that in the interests of parliamentary government the public accounts committee might more adequately discharge a very important duty to the Dominion if it carried on its investigations, not because one party or the other suggests this or the other thing, but in order that a great spending department should have its entire accounts, as set out in the Auditor-General's report, considered by that committee, as a group of business men dealing with expenditures from every angle and determining to what extent they might make recommendations in order to ensure a greater return for the money expended. That is certainly a principle that governs in the operations of that committee's work in England. As I have said, not wishing to repeat myself, they have gone into great detail in some of the recommendations they have made. I have felt, more particularly in recent years, that with the great volume of business this country transacts, as indicated by the Auditor-General's report, the greatest service that could be rendered by a member or members of this House would be to take an active interest in the public accounts committee, not swayed by the desire to protect ministerial responsibility, but for the purpose of ensuring the greatest possible efficiency in the discharge of the obligations that rest upon the Government in regard to the expenditure of public revenues. . . . The committee on public accounts at the beginning of a new Parliament would consist, as far as possible, of members who take an interest in matters of that kind, and so far as possible continuity should be preserved during the lifetime of that Parliament in the membership of the committee, and it would take up from year to year one department of the public service, and dispose not only of the question of expenditures, but deal also with questions of revenue. I urge that, because at the moment there is no audit of revenues in this country; there is no supervision by the Auditor-General of the revenues of Canada at this moment. In the very nature of things that would become exceedingly difficult and is surrounded by many limitations that would be necessarily imposed upon an auditor in connexion with the revenues that are derived from operations of the public service. But I submit, and I think the Minister of Finance will find, in the end, that it might serve a great purpose if the public accounts committee were constituted as I have suggested with power preserved during the lifetime of the Parliament to take up at the beginning of each session, and to determine national revenue, for instance, under the headings of (*a*) sources of revenue and (*b*) checks upon those sources. Then take up the expenditures, as to the circumstances under which they are made, the methods controlling them, and take up definitely as the committee does in England the whole operation of that department. Then recommendations

could be made to the House and to the Government that would enable the Government to check revenues more closely and to supervise more closely and to supervise expenditures in the department to a greater extent.

IV

POLITICAL PARTIES IN THE HOUSE

A. THE FARMERS' MOVEMENT

Cf. Chapter VIII. Section III (B).

B. THE SPLIT IN THE PROGRESSIVE PARTY

I. THE BIRTH OF A NEW GROUP

(*Manitoba Free Press*, June 18, 1924.)

Ottawa, June 17.—A fourth political party has emerged in the Parliament of Canada.

This party, which has existed vicariously ever since the first session of the present Parliament, and has laboured to obtain its ends under difficulties, has hitherto been known by a number of appellations. First it was known as the radical wing of the Progressive party, and latterly as the 'Ginger' group, the latter title being earned as a result of the 'pep' which the supporters of the movement sought to inject into the slower going and more stately counsels of the parent group.

Like many another new-born political entity, the 'Ginger' party, according to authoritative sources, is to blaze a new trail in the 'wilderness of political incompetency'. In its framework it will eschew those stanchions and girders which its forerunners in the history of political parties have deemed essential. There is to be no leader. The bond of party is to be so roughly fastened that, unless otherwise informed, an observer might think its members were quite independent. The union is to be founded upon a unity of outlook on the major problems confronting the nation and, since it is organized on what is called occupational lines, this unity of view, it is expected, will continue in the future....

2. LETTER OF WITHDRAWAL FROM THE PROGRESSIVE PARTY

(*Ottawa Citizen*, June 20, 1924.)

Signed by six members¹ of the Progressive group of the House of Commons, a letter has been sent to Mr. Robert Forke, leader of the party, which states, in effect, the intention of the writers to refrain from attending any more caucuses of the party on the ground that the principles on which they were originally elected have not been adhered to. Those signing the letter are: Messrs. H. N. Campbell, Mackenzie;

¹ Four more Progressive members joined the insurgents on July 5, 1924.

Robert Gardiner, Medicine Hat; E. J. Garland, Bow River; D. M. Kennedy, West Edmonton; H. E. Spencer, Battle River; and Miss Agnes MacPhail, South East Grey.

The letter reads:

'Dear Mr. Forke:

'With the kindest feelings towards yourself and after very careful and deliberate consideration, we the undersigned hereby inform you that we do not propose henceforth to attend the caucus of the parliamentary group of which you are the leader; and in order that there may be no misunderstanding, we herein set forth the reasons which have led to our action and to which we propose to give full publicity.

'Our first duty is to our constituents and to the democratic principles of the new political movement which they so heroically inaugurated. That new political movement began among the farmers; it was indeed the political expression of the various Farmer organizations throughout Canada. Negatively it represented a twofold protest; a protest against the economic burdens that have been piled upon the agricultural industry as the result of forty years of class government; and a protest against a party system organized and dominated from the top, and by means of which the financial and commercial interests have retained power for so long. Positively it represented a noble effort to give effect in the political field to that co-operative philosophy which has not only constituted an outstanding characteristic of the Farmers' movement, but which is the world's best hope of saving civilization.

'There was, we believe, nothing further from the minds of our constituents than the building of another party machine after the model of the old. That this might be made clear the Farmers' organizations, owing to whose activities we find ourselves here, formulated their own political programme, did their own political organizing and financing, selected and elected us, and commissioned us to co-operate with all parties, groups, or individuals, in order to carry our principles into effect. As we see it there are two species of political organization—one the 'Political Party' that aspires to power, and in so doing inevitably perpetuates that competitive spirit in matters of legislation and government generally which has brought the world wellnigh to ruin; the other is the democratically organized group which aims to co-operate with them for power. It is as representatives of this latter type that we take our stand, and in doing so not only remain true to our convictions, but have regard also to the obligations which we undertook to the Farmers' organizations in our constituencies. Our task is to represent our constituents by co-operating in Parliament with all parties and groups so as to secure the best possible legislation for Canada as a whole.

'In our opinion the principles above outlined to which we adhere have been departed from, and in this connexion, we desire to draw

your attention to a few among many incidents of the past three years. You will undoubtedly recall that as far back as the Saskatoon and Toronto Conferences following the 1921 election, and subsequently at the Winnipeg Conference, some difference of opinion and viewpoint was apparent as to the purpose, method of action, and future of the new political movement then and there represented. The divergence of viewpoint then evident has persisted; indeed has been, we believe, accentuated. Moreover in our opinion the present parliamentary organization of the Progressive group tends to perpetuate the type of partyism already described, which we were elected to oppose, and to hamper us in the advocacy of those principles to which we adhere. Some of us have made attempts to secure reorganization of the group on a different basis, but without results.

'Bearing in mind the fact that each constituency represented by us is autonomous in the nomination, election, financing, and control of its member, it should be evident that it is impossible to secure our support for the formation of a political party organization on the old lines involving majority rule in caucus, whip domination, responsibility for leaders' statements and action, and so forth. The effort, perhaps unconscious, to build a solid political party out of our group has been distressing and paralysing. As an example you will recall the situation last year when the Bank Act was under consideration in Parliament. After the caucus had agreed, without objection, to support those of its members who are putting up a strenuous fight in committee for what they considered necessary financial reform, a sudden change of attitude took place and the majority actually hindered the minority from putting up such a fight on the floor of the House as circumstances demanded. As notice had been given to the Government of our intention to oppose with all our strength the granting of bank charters for a ten-year period, the minority had to accept a defeat or break with the majority.'

'You will readily recall similar instances of honest differences of opinion struggling against old party proprieties and conventions—the question of our immigration policy, this year's Budget, and so forth, culminating in the recent action of the majority endorsing a proposal to send a parliamentary delegation to the British Empire Exhibition at the public expense. The divergence of viewpoint has been so marked that it would seem in the best interests of the movement that we be left free from constraint to work for the cause, independently of the present parliamentary organization. Such a course, we believe, would enable us to co-operate more harmoniously and freely with those who remain in the Progressive group and who are in agreement with us on any particular issues.'

'It is with a full realization of our duty to our constituents and for the purpose of preserving the virility and independence of the political movement of the organized farmers of Canada that we now feel it

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necessary to take such action as has been indicated. We desire, however, to make it perfectly clear that we are free to co-operate with all others and invite and welcome the assistance and support of those of all parties who genuinely desire legislation such as will best promote the interests of Canada as a whole.'

3. REPLY OF THE PROGRESSIVE LEADER

(*Ottawa Citizen*, June 21, 1924.)

Robert Forke, leader of the Progressive party, has replied to the six Progressives who informed him that they had no intention of further attending Progressive party caucuses. . . .

Mr. Forke's letter reads:

'Ottawa, June 20, 1924.

'Miss MacPhail and Gentlemen:

'Your communication of June 14th has been duly transmitted to the members of the Progressive party in Parliament.

'While no one can question your right to take the course you propose, the Progressive members regret that you have seen fit to withdraw from the caucus for reasons which they cannot but regard as unsubstantial and inconclusive. When you say that the Progressive group in Parliament has departed from its fundamental principles they must emphatically deny the allegation. Whatever interpretation you may have placed on the attitude or action of your colleagues, it is not true that the group has diverged in any respect from the principles for which it has stood from the first. The principle of constituency autonomy, involving methods of organization in the country, does not affect the organization of the group in Parliament and has nowhere been departed from.

'The instances which you adduce in support of your contentions resulted from the expression of various sectional viewpoints, but these divergences did not involve a departure from Progressive principles. They were rather the honest expressions of opinions of men who, like yourselves, are responsible to their constituents.

'Moreover, they were mainly differences concerning matters of procedure and other questions which in no sense touch the principles to which we adhere in common. To interpret such instances as a departure from Progressive principles is quite gratuitous and not a little unfair to those with whom you were then associated.

'The differences between us would appear to arise in connexion with our parliamentary organization. Three years ago the Progressive members adopted the usual form of parliamentary organization, with leader, whip, and caucus, but they by no means became servile to it. The meetings of the caucus have been held in exactly the same spirit and manner as the meetings of our local organizations and conventions

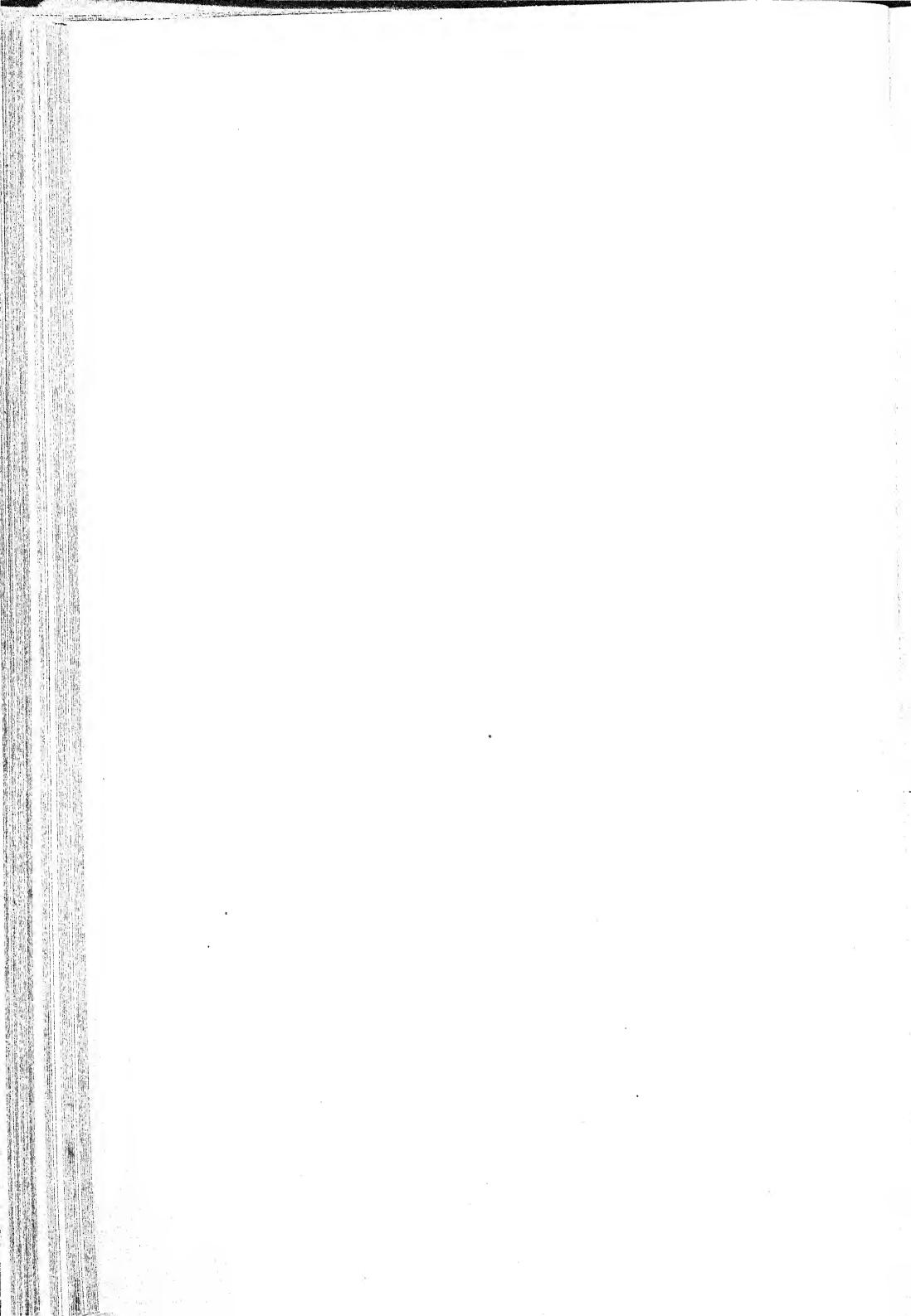
at home. They have possessed the same strength and the same weakness, neither more nor less. Whip domination, autocratic leadership, and majority coercion would be as distasteful to us as to you, but no endeavour has been made to establish them, neither has any attempt been made, as you suggest, to build up a solid political party on the old lines. Only time, experience, and continued association of the various sections of the party will produce the ideal parliamentary organization.

'Your objections to the present form of organization seem to us to be caused rather by suspicion and personal sensibilities than by anything fundamental. They arise in every organization where men have full liberty of expression and will appear in any that might be substituted for the present caucus. Unity of purpose and of action and a definite parliamentary organization are essential to any effective action in the House of Commons and to the attainment of the practical reforms which our constituents look to us to pursue.

'We trust that further consideration may lead you to the realization that co-operation from without the group can never be as effective for our common purposes as united action within it.

'Yours very truly,
(Signed) 'R. FORKE.'

'On behalf of the Progressive group.'



CHAPTER FIVE
THE SENATE



THE SENATE

They stood so still that she quite forgot they were alive, and she was just going round to see if the word 'TWEEDLE' was written at the back of each collar, when she was startled by a voice coming from the one marked 'DUM'.

'If you think we're wax-works,' he said, 'you ought to pay, you know. Wax-works weren't made to be looked at for nothing. Nohow!—*Through the Looking-Glass*.

THE House of Commons is the busiest painter of constitutional issues in Canada, and it is a rare session that does not leave behind some addition to the Gallery of Political Science. A new sketch of the Governor-Generalship, a retouching of an old view of civil service reform, a futuristic attempt to give effect to the members' conception of the foreign relations of the Empire—the walls are fast being filled with such efforts. Nor is the Senate far behind; although it is more apt to attempt the most difficult task of all, self-portraiture. Hence much of the material on the Senate comes from the red chamber itself, and is probably somewhat flattering as a consequence. One regards these portraits with some scepticism, not to say suspicion: this alertness of expression and air of youth is probably not found in the original; the real eye is not so bright; the forehead is neither so high nor so broad as the painter would have one believe. Such doubts, moreover, are usually confirmed when the pictures are compared with others of the same subject by less prejudiced artists.

The material on the Upper House is very great and not particularly good. The faults, merits, and possible alteration of the Senate were discussed even before its creation; and the same ground is still being gone over in the same way. The Senate's history has been marked by a double confusion: a confusion of theory as to what the real purpose of the Upper House was and what it ought to be, and a confusion of practice as well which has resulted from changing ideas in both Houses or a shifting of political strength between the two chambers. Has the Senate, for example, been the protector of minority rights? Has it acted as an independent legislative body? Has it been the guardian of the provinces? What are its powers in financial legislation? Has it a moral right to throw out legislation quite apart from the popular demand for it? History can give a consistent reply to none of these questions; and the Canadian people to-day are still

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at a loss to state the rules which they would like to have applied in the future.

Section I discusses the Senate as it exists: its personnel, its growing unimportance and futility. Section II describes the Senate as it would like to exist: that is, the efforts which have been made to retain its power and importance. These include the long-standing dispute with the House on financial legislation, and the schemes advanced to combat the growing demand that all the Cabinet Ministers should sit in the Commons. Section III asks the question: Shall the Senate exist at all? The material here is almost endless in amount, and it has consequently been reduced to very recent discussions on reform.

I

THE UNREFORMED SENATE

A. PERSONNEL

I. APPOINTMENT

(*Canadian House of Commons Debates*, January 20, 1908, pp. 1573-4.)

Sir WILFRED LAURIER (Prime Minister): . . . But I think I should not sit down without offering a word of comment as to the manner in which senators are appointed. My hon. friend stated a moment ago that when I was in opposition I expressed the opinion that senators should be appointed by both parties. I do not know whether I ever expressed such an opinion. I said many things when in opposition which I may have forgotten. It is twelve years or more since I have been in opposition, and therefore my memory may perhaps be clouded on this point. At all events, I thought it would be fair that both parties should be represented in the Senate. When it comes to the appointment of senators, it is a difficult matter. With all the good will I have, if I were to advise His Excellency to take a man from the opposition side, I do not know that my action would be well received. My hon. friend from St. John (Mr. Daniel) would hardly expect me to submit to His Excellency the name of a man who represented us to be everything that was bad, who had nothing good to say of us, who declared that we were corrupt and wicked and guilty of all the sins in the calendar. That would be, I think, more than Christian charity could be expected to endure. For example, I could not be expected to advise His Excellency to appoint the hon. member for North Toronto (Mr. Foster). Even if I were to offer to His Excellency the name of one of the lukewarm Conservatives, who is not very strong on one side or the other, perhaps gentlemen on the other side would be the very first to find fault with such an appointment. Therefore on the whole I believe these appointments have to be made as all of them are made. When we come to select men who we think are worthy of representing the country in the Senate, after all, the standard of merit which we are accustomed to apply under parliamentary government it is very difficult to depart from. Sir John Macdonald in his day had many appointments to the Senate to make, many more than I have had. He appointed one gentleman from the Liberal side; but this gentleman was a personal friend of his and one who on a particular occasion had stood by him in very trying circumstances. I am sorry to say that I have not yet found in the ranks of the Conservative party a man of such independent views as John Macdonald was in the ranks of the Liberal party. With all the diligence with which I have scanned the other side, I have not been able to find such

a man. For this reason we have had to advise His Excellency to appoint men from our own ranks, and I am glad to say that the appointments made have generally been acceptable. Even though we have the power of appointment in our hands, for my part I hold the same view that I had when in opposition, that the Senate ought to be reformed; but I am sorry to say that up to the present time I have not been able to satisfy myself what would be the best and most adequate reform. I am still open to conviction, I would like to have more views expressed on this question and further suggestions made, and for this reason I hope that this debate will not be concluded this evening. Therefore I beg to move the adjournment of the debate.

2. 'BIG INTERESTS' IN THE SENATE

(*Canadian House of Commons Debates*, March 9, 1927, pp. 1039-42.)

Mr. J. S. WOODSWORTH: . . . Now I pass on to the next point I have mentioned in the resolution, and that is the action of the Senate in preventing the enactment of popular legislation. It is not my purpose, Mr. Speaker, to enter into any very lengthy discussion of the need for reform of the Senate. But I should like to point out that we have had in the last few years a splendid exhibition of the power the Senate possesses in nullifying the expressed will of the people. I have here a list of the measures rejected by the Senate since confederation, which was placed on Hansard in 1925 by Mr. Lewis, the then member for Swift Current. It will be found in volume i, page 935, and consists of some one hundred and fifty measures. Whilst there may be some whose rejection a later and more mature judgement might justify, I think it will be recognized that on the whole the action of the Senate has been reactionary in character. We remember the measures that last year were rejected by the Senate. The amendments to the Criminal Code, the amendments to the Immigration Act, which had passed this House several times in succession in various forms were again rejected by the Senate. But above all I think of the Old Age Pension Bill. I am not going to characterize the action of the Senate in rejecting this Bill. I think I could not do better than to refer hon. members to the speech of my friend from Comox-Alberni (Mr. Neill), on his motion to ascertain the action taken by the Senate. You will find that in Hansard, page 4420. I do not know that that motion was ever put, I do not know that we ever had any report as to why the Senate threw out that legislation. I content myself with saying that it is intolerable that an irresponsible body should be able to nullify the action of the elected representatives of the people. Right across this country from coast to coast there has been felt and expressed a decided resentment on account of the action of the Senate in regard to that Bill. We have been accustomed possibly to speak a little bit slightlying of that body, as if it were composed of

elderly men, themselves in receipt of a pension. On the other hand, there have been those who saw in the Senate the champion and the safeguard of provincial rights. I think there is another aspect from which we ought to view this matter, and that is that to no small extent the Senate is the champion and safeguard of what are commonly called the big interests.

Mr. GARLAND (Bow River): As soon as the Liberal party gets through reforming the Senate it will be all right.

Miss MACPHAIL: For the Liberal party.

Mr. WOODSWORTH: A few weeks ago, in a little Labour paper published in Toronto, *Canada Forward*, I find this statement:

In the Senate fifty members of that body control and direct the economic life of Canada. That is to say that fifty senators are directors of 334 commercial and financial institutions.

I wrote to the editor of that paper asking him on what data he based his statement, and he was good enough to send me a list of the companies in which some of the senators were interested. The editor is Mr. James McA. Conner, of Toronto. It is possible that there may be some inaccuracies in this list. It is quite true that it is not complete, as one can readily recognize that there are other companies in which these senators are interested that are not listed here, but I would like to run over a few of these companies briefly, in order that the class nature of the Senate may be clearly seen. I take them almost at random. I find the name of Senator C. P. Beaubien.

Mr. BEAUBIEN: Not I.

Mr. WOODSWORTH: No.

Mr. COOTE: Not yet, but soon.

Mr. WOODSWORTH: I notice that he is interested in the following companies:

The Atlantic Sugar Refineries, Ltd.
The Frontenac Breweries.
The Mount Royal Hotel Company.
The North Railway Company.
Beaubien, Ltd.
The Ames Holden, Ltd.
The British Empire Steel Corporation.
The Dominion Steel Corporation, Ltd.
Dominion Iron and Steel Company, Ltd.
Nova Scotia Steel and Coal Co., Ltd.
Eastern Car Company, Ltd.
Acadia Company, Ltd.
Dominion Coal Company.
Nova Scotia Land Company.
Sydney Lumber Company, Ltd.
James Pender and Company, Ltd.
Halifax Shipyards, Ltd.

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Cumberland Railway and Coal Company.
Sydney and Louisburg Railway.
Canadian Car and Foundries, Ltd.
Canadian Steel Foundries, Ltd.
Montreal Steel Works, Ltd.
Pratt and Letchworth Company, Ltd.

Mr. GARLAND (Bow River): Does he happen to be a farmer as well as director of these companies?

An hon. MEMBER: Is that all one man?

Mr. WOODSWORTH: Yes, it is all one man.

Sir EUGENE FISSET: What about the Levis Laundry?

Mr. WOODSWORTH: The Levis Laundry has been suggested. I am not sure of that. I said the list was quite incomplete.

I pass on now to Senator Casgrain, and I find he is a director of the following companies:

Canada Steamship Lines, Ltd.
Northern Navigation Co., Ltd.
Tidewater Shipbuilders, Ltd.
Davie Shipbuilding and Repairing Co., Ltd.
Great Lakes Transportation Co.
Midland Shipbuilding Co.
George Hall Coal Co.
Richlieu Ontario Navigation Co.
Inland Lines, Ltd.
Niagara Navigation Co.
St. Lawrence River Steamboat Co., Ltd.
Thousand Island Steamboat Co., Ltd.
Merchants Montreal Lines, Ltd.
Canada Cement Co., Ltd.
Montreal Cottons.
Montreal Life Insurance Co.
Reliance Life Assurance Co.
British Empire Steel Corporation, Ltd.
Dominion Steel Company, Ltd.
Dominion Iron and Steel Co., Ltd.
Dominion Coal Co., Ltd.
Nova Scotia Steel and Coal Co., Ltd.
Eastern Car Co., Ltd.
Dominion Shipping Co., Ltd.
Acadia Coal Co., Ltd.
Cumberland Railway and Coal Co.
Halifax Shipyards Co.
Nova Scotia Land Co.
Sydney Lumber Co., Ltd.
Sydney and Louisburg Railway Co.
James Pender and Co., Ltd.
Montreal Tramways Co.
United Securities, Ltd.

Montreal Life Insurance Co.
Montreal Herald.
Le Canada.

It is perhaps rather wearisome to hon. members to listen to my reading of all these names.

Mr. GARLAND (Bow River): Read some more. They are fine.

Mr. WOODSWORTH: I shall be glad to read a few more. I think that perhaps only in this way can we form any idea as to the interlocking directorates which we have in this country, and as to how far even one individual can control a vast range of industrial, commercial, and financial enterprise. I come now to Senator N. Curry, and I find he is a director of the following companies:

Cuban Canadian Sugar Company.
Montreal Life Insurance Company.
Hattie Gold Mines, Ltd.
Rhodes Curry Company, Ltd.
Canadian Car and Foundries Company, Ltd.
Canadian Steel Foundries Company, Ltd.
Montreal Steel Works, Ltd.
Pratt and Letchworth Company.
Canada Land Company.
Bank of Nova Scotia.
Canada Light and Power Company.
Beatty Gold Mines, Ltd.

And to use the words of the official description, if I may call it such, that is given us in the Canadian Parliamentary Guide of 1926, he 'is president of twelve companies and director of thirty'. Let me complete the Guide's account of the well-rounded life of a senator. At page 78, I find the following:

Altogether is president of twelve companies and director of thirty. A large contributor to educational, religious and charitable institutions, including \$100,000 to Acadia University; \$25,000 to McGill University; \$5,000 to Dalhousie University; and so forth. Recreations: yachting, motoring, shooting, fishing, curling. A Baptist. A Conservative. Summoned to the Senate November 20, 1912. Clubs: Marshlands, Amherst, N.S., Rideau and Country Clubs, Ottawa; Mount Royal, St. James', Forest and Stream, Montreal. Business address, Transportation Building, Montreal; city residence, 581 Sherbrooke street west, Montreal, country residence, Tidnish, N.S. Winter house, Paget, Bermuda.

Miss MACPHAIL: Is my hon. friend suggesting that a captain of industry such as this man whom he has last quoted affected educational policies by giving large contributions to universities?

Mr. WOODSWORTH: No, I am making no suggestions; I am only stating facts. There are one or two others that I might give. I am not reflecting on these hon. gentlemen in any way whatsoever, but I

am suggesting that we have here a state of affairs which ought to be known to the public generally throughout Canada; and whereas in this Chamber we hear a great deal of criticism of the class groups—because a few farmers can get together it is said that they are indulging in a very reprehensible practice—and because a few Labour people get together it is suggested that they are altogether a class group—I would suggest that it is quite obvious that these gentlemen who are sitting in the Senate are also very distinctly a class group, and that ought to be clearly recognized.

I will speak of one of the latest additions to the Senate, a gentleman who is highly honoured, I am sure, by the majority of the members of this House, Mr. W. L. McDougald. I notice he is a director in a number of corporations, as follows: . . . (Here follow the names of nineteen companies).

I have page after page of these, Mr. Speaker, but perhaps one or two more will be sufficient. I have selected them, frankly, just as I happened to see the longer lists of companies underneath their names, but I may say that these cases are by no means exceptional.

Some hon. MEMBERS: Read them all.

Mr. WOODSWORTH: Here is Senator L. C. Webster. He is interested, a director, and no doubt working hard in all these various lines of industry: . . . (Here follow the names of forty-one companies).

I will give one other. Here is Senator R. S. White. He is a director in the following companies: . . . (Here follow the names of twenty-two companies).

My correspondent makes the following comments and summarizes this information as follows:

There are 27 lawyers in the Senate, of whom 12 are Conservatives and 15 Liberal. Some 6 Conservative lawyer senators are directors in 52 financial and commercial institutions, while 6 Liberal lawyer senators are directors on 36 commercial and financial institutions, making a total of 12 lawyers in the Senate who are directors in 88 different concerns. There are 11 journalists, editors and publishers, 6 of whom are directors in 34 commercial and financial institutions. There are 11 manufacturers and capitalists who are directors in 131 commercial and financial institutions. There are 8 doctors who are directors in 22 commercial and financial institutions.

The House rather encouraged me to go on, Mr. Speaker, and read these long lists, and I did so even though it might somewhat interfere with the argument I was trying to present in as concise a form as possible. But in view of the character of the interests of the members of the Senate I think I am quite warranted in the statement which I made a few minutes ago, that it is intolerable that an irresponsible body such as this, so largely representing big interests, should be able to nullify the actions of the elected representatives of the people. . . .

3. THE OLDEST SENATOR

((a) *Toronto Mail and Empire*, July 20, 1927 (Editorial).)

Members of the Senate of Canada are to be invited to assemble in Ottawa on September 29th next, not to transact parliamentary business but to do honour to one of their number, Hon. George Casimir Dessaulles of St. Hyacinthe, Quebec. On that day Mr. Dessaulles will be one hundred years of age, and certainly will not have many competitors if he claims the title of the oldest active parliamentarian in the world. On his birthday Mr. Dessaulles will receive congratulations from his fellow members of Parliament and a life-sized portrait of him, presented by his confreres in the Senate, will be unveiled. . . .

Mr. Dessaulles is not the first man to celebrate his one hundredth birthday while a member of the Canadian Senate. The late Hon. David Wark, who was born in Ireland in 1804, was a member of the Upper House of Parliament at the time of his death in 1905, when he had entered upon the one hundred and second year of his age. . . . Mr. Wark was a Senator for thirty-eight years. The late Hon. Lawrence G. Power of Halifax was appointed to the Senate in 1877 and had been a member of that body for forty-four years when he died in 1921 at the age of eighty.

The Senate of Canada is not composed, as some persons have seemed to suppose, entirely of very aged men. It has had among its members some remarkable men who have been able to perform their official duties in the eighth decade of their lives. Sir Mackenzie Bowell was ninety-four when he died in 1917, and Sir Charles Eugene Boucher de Boucherville, who had the distinction of belonging both to the Senate of Canada and the Legislative Council of Quebec, was ninety-three when he died in 1915. Both will be remembered men of extraordinary vigour at ninety years of age. Sir George Foster, after forty-five years in public life, is in the Senate and will be eighty years of age in September. As for Mr. Dessaulles, it is pleasant to note that he is 'hale and hearty and possesses remarkable vigour' as he approaches his hundredth birthday.

((b) *Ottawa Citizen*, April 21, 1930.)

Senator Dessaulles, dead at St. Hyacinthe, who held a seat in the Senate of Canada since 1907, had a remarkable record. So far as is recalled by those around the Senate since he was there, he never once participated in any debate or gave expression to an opinion; but he followed the discussions closely and was there when the division bells rang. He was a kindly old man, held by all parties in venerable respect because of his great age. They all united in doing him honour, publicly, on the occasion of his hundredth birthday, when he was presented with a portrait in oil which will now become the property of the Senate.

When Senator Dessaulles was appointed it was a well-known fact that he was a compromise. He had not sought a senatorship. Between two influential aspirants the rivalry was keen and Sir Wilfrid Laurier finally induced them to agree on Mr. Dessaulles, who was then seventy-seven years old. Some of the callous friends of the other two calculated that the old senator would not last long and that the seat would again be opened. But Senator Dessaulles outlived them all by years.

B. THE GROWING UNIMPORTANCE OF THE SENATE

I. PARTY LEADERSHIP IN THE SENATE

(*Canadian Senate Debates*, March 14, 1922, pp. 15-16.)

Hon. RAOUL DANDURAND (Leader of the Government in the Senate): . . . Honourable gentlemen, I crave permission to take up a matter which is not contained in the Speech from the Throne. It may seem a matter personal to myself, but it bears on the conduct of affairs of this Chamber. I refer to an attitude of mind which has permeated the Senate through tradition and for a long period of years. At the root of the matter is the whole question of the function of the Senate and the exercise of its powers. Should it be administered by party groups—by a Ministerial party and an Opposition? . . .

For my part, from the moment I entered this Chamber, I felt reluctant to call the leader who sat opposite the Government representative the 'Leader of the Opposition'. That term was somewhat repugnant to me because it implied a systematic official Opposition, and I did not see the role of the Senate in that light. It seemed, according to the dictum of the founders of confederation, that the function of the Upper House was to tender sympathetic advice to the Government, and to postpone or oppose or modify the measures of the Government according to its own good judgement without any party bias. Having these sentiments at heart, I confess that, in assuming the direction of the legislation in this Chamber, I disliked the idea of crossing the floor, having been last session at your left, Mr. Speaker, and now coming to sit at your right. What did that action purport? Its meaning was that there were in this Chamber victors and vanquished. It seemed to take into account the fact that there had been elections in the country, elections which, to my mind, should affect the popular House but not this Chamber; and I had occasion to tell my honourable friend from Calgary [Hon. Sir James Lougheed] that I was perfectly agreeable to and even insistent upon his remaining on this side of the House.

I thought also, in order to eliminate party politics, that this Chamber should have no Ministers, either with or without portfolio. I was told that the Government business should be handled in this Chamber by official representatives of the Government. I felt that there was

a better way—that, instead of everything being in the hands of one man, each Minister could very well select a Senator as his representative, and that, instead of one man taking charge of public Bills, that service could be assigned to ten, twelve, or fifteen senators. I felt, and I still feel, that we should safeguard the independence of this Chamber, and keep it uninfluenced by any outside pressure. I felt, and still feel, that this Chamber should owe its fealty only to its King and country.

Party divisions in this Chamber have created this state of mind. We have leaders. Well, let the leaders direct; let them lead; let them carry the responsibility and do the work. If the leader set up as that of the Opposition criticizes, there is a wave which carries a certain number and causes them to think and feel with him; if—and this is more serious—the leader ceases to criticize and says amen, a vast number in this Chamber will be disposed to repeat amen. I do not believe this is the proper function of the Senate. The Government did not see eye to eye with me when I suggested to its leader and his colleagues that Cabinet Ministers should not sit in this Chamber. The Government was agreeable so far as Ministers holding portfolios were concerned, but thought there should be one who would have a first-hand knowledge of the business of the Government in order to lay it before and impart it to this Chamber. I recognize that the duty of the Government is to furnish information, and that much I intend to do to the best of my ability; but when I have performed that task, it is my feeling that the senators are then supreme in the judgement which they exercise. For my part, I refuse to lead a Ministerial party in this Chamber; I claim no followers; I shun party discipline and the party whip. I invite criticism of the measures of the Government, criticism from the right as well as from the left; and I feel that it is the responsibility of each senator to try to improve the legislation that comes before us.

It will be obvious to honourable gentlemen that I do not seek uniformity of thought in this Chamber. In every deliberative assembly the trends of thought are many, and the ideals of government diverse. All shades of opinion are to be found within the walls of every house of parliament, be it an upper or a lower house. These various opinions will be given expression to more freely if they are given full play in an atmosphere of perfect independence.

2. DIFFICULTIES OF THE SENATE AS A LEGISLATIVE BODY

(*Canadian Senate Debates*, February 7, 1923, pp. 53-9.)

Rt. Hon. Sir GEORGE E. FOSTER: . . . I am not satisfied with the position that the Senate holds with regard to the legislation and government of this country. I do not think that the Senate, which is a constitutional part of the legislative entity of this country, occupies

the position which it ought to occupy. Here are ninety-six men drawn from every section of the Dominion of Canada—men of experience, men of large business experience, many of whom have had long experience in legislative matters, some of whom have been ministers of departments in federal or provincial legislatures and governments. Here we are, and we spend our time during the session ostensibly ready to do, or doing, the work of the State which constitutionally devolves upon us. I do not think we are equipped or are given exactly the proper means to enable us to carry out that work. It is impossible for my honourable friend the Leader of the Government, even though he worked every hour of the day and every hour of the night, to make himself acquainted with the principles, not to say the details, of the different departments of the Government. He cannot be expected to do it; he cannot do it. He himself knows that he cannot do it. When ninety-six members set their faces towards a subject and ask for information, trying to ascertain the mind of the department which proposes the legislation in question, and to learn what has been the effect of previous legislation and what are the details and results that have been worked out, it throws the damper of a very wet cloth upon those ninety-six men to be told by the honourable Leader of the Government here: 'I do not myself know, but I will ask for information.' There is nothing more depressing. A query of information is sent to some practising member of the Government in a Department, and it is handed over to a clerk, and perhaps ten days, or twenty days, or even a month, afterwards, a lifeless and unvivified memorandum is brought to this House and is laid on the table. All the spirit has died out. The desire for information is only a living thing when the information can be given at the time it is required. We have no proper liaison between that part of the governmental entity that sits in another Chamber and that which sits here. What this Government ought to give us is at least two operating ministers of departments in this Chamber. In the olden times we had them—sometimes more, hardly ever less. Then you will impart real life to the doings of this Chamber, and you will find that members will take an interest in its business, and that these seats will be occupied rather than vacant.

I commend that suggestion to the Government, in the interest of the Government, the interest of the country at large, and in the interest of the Senate. Senates are powerful bodies in other countries. Take the Senate of the United States, for instance; take the House of Lords in Great Britain, which, though shorn of some of its powers, is still a mighty factor in the administrative work of the United Kingdom and the Empire. Who on the street asks to know what is the opinion of the Senate upon this or upon that question? Who in the press really takes any trouble to know whether the Senate has any ideas, and, if so, what they are, upon any branch of legislative concern, or

upon conditions which require the best and most united work of all in order to arrive at a successful conclusion?

I think this might be done. I see on the other side of the House, seated around my honourable friend who represents the Government (Hon. Mr. Dandurand), men of great ability, men of large experience, men who have energy and a desire to do their work in the way of legislation. What is to prevent my honourable friend making a levy of a certain number of men on his own side of the House and arranging that they shall be responsible to their brother senators for the affairs of departments which are not represented in this House? That would give those honourable gentlemen something to do which they would be very glad to do, and it would be of immense interest and help to us all. Surely something of that kind might be done.

Then, again, our experience of last year saw almost all the Bills that came to the Senate for examination pitched in during the hot days of summer in almost the last week of the session of Parliament. What opportunity or chance is there for good work under those conditions? Why could we not have a reasonable number of important Bills given to the Senate to take up and dissect, upon which we could bring our experience and wisdom to bear to put them into shape for the Chamber below? I do not know whether the British Constitution or the Canadian Constitution would be absolutely broken into bits if an arrangement were made somewhat like that foreshadowed by my honourable friend—that in the case of very important measures a member of the Government in active administration of a department should have a seat in this House for the purpose of explaining to the members the details and inner workings which it is almost impossible to get in any other way, and which could so easily be communicated in some such way as I have suggested. The British Constitution has stood many an assault from the days of Cromwell down, and it still lives and is vigorous; I do not believe that the pillars of the Canadian Constitution would be pulled down if some such practical arrangement as I have outlined could be made.

Honourable gentlemen, that is my humble contribution to the gaiety of the Senate in respect to the debate upon the Address....

Hon. RAOUL DANDURAND (Leader of the Government in the Senate): Honourable gentlemen, I intend to move that when the Senate adjourns this evening it do stand adjourned to Tuesday evening, the 27th of February, instant, at 8 o'clock p.m.

I ask the attention of my colleagues while I explain why I am making this motion, and at the same time answer the inquiry of my right honourable friend the junior member for Ottawa (Right Hon. Sir George E. Foster) as to the reason why the Senate is not furnished with more work at the beginning of and throughout the course of the session.

The speech which my right honourable friend has made on this

subject has been heard, I am sure, every year during the twenty-five years that I have been in this Chamber; and I am convinced that every year during the twenty-five years that preceded that time some senator rose to ask why more public business was not introduced into the Senate and why more work was not given to it during a period of the session when this House could apply all its faculties to the solution of the problems before it. I myself have made five or six speeches, perhaps more, on this very point; but I think I have discovered the reason why public Bills do not originate in this Chamber. I may say that during the Liberal Administration of 1896-1911 we had in this Chamber for a number of years the Minister of Justice, Sir Oliver Mowat, who was succeeded by the Hon. Mr. Mills. At the same time we had here the Secretary of State. Any Bills that would emanate from the Departments of those Ministers would be introduced in the Senate. They might be many or they might be few. But we had at the hands of those gentlemen no Bills that emanated from any other departments, and the reason is obvious. A Minister who has a Bill prepared by one of his officers or by himself naturally wants to introduce it himself. If he is a member of the other Chamber, he presents the Bill as his child. Naturally we do not receive it here until it has passed the Commons. Some Bills would be peculiarly interesting to the Senate and fitted for our committee work, but for the reason which I have given they start in the Commons. It is to meet that condition that I have on more than one occasion advanced the proposal that members of the Cabinet sitting in the other Chamber should, under our rules, be allowed to come to this Chamber for the purpose of introducing here their own legislation. When we meet again I may bring this matter to the attention of the Senate, and move that our rules be amended accordingly.

My right honourable friend has suggested that, if Ministers belonging to the other Chamber do not come to this House owing to our inaction in amending our rules, or unwillingness on their own part to come, we could distribute their work among a number of senators instead of leaving all this kind of work to one alone. I think I submitted that idea in my speech on the Address last year. I am quite ready to support such an innovation, whether it be in the one form or the other. If the Ministers from the other House will not come here, I know of no reason why more senators should not handle Government Bills. I would not stop at members on this side of the House. The Bills are numerous, but most of them are not party Bills, and if there were some senators specially fitted to handle a Bill from one of the departments, even though he were sitting on the other side of the House, I would gladly ask him to take upon himself the responsibility of proposing and supporting that legislation in this House.

This explains why the Senate generally adjourns for a number of weeks when we have voted the Address. But this does not tell the

whole story. My right honourable friend knows that the House of Commons takes at least five or six weeks during the session to dispose of Supply in committee. We take five minutes; sometimes we have a short debate that lasts an hour. This alone would suffice to explain and justify the adjournment of the Senate for some weeks. The rest of the legislation of Parliament, whatever it be, whether it starts in the other Chamber or in this one, is handled by this Chamber of ninety-six members in much less time than it takes the Commons, with 235 members, to deal with it. This again explains to the members of the Senate and to the public why this House works only four days in the week—not sitting on Monday or Saturday—while the House of Commons works five days, not sitting on Saturday. Furthermore, very few of the 235 members of the House of Commons who make set speeches there care what has been said during the debate by twenty other members who may have preceded them. When they have prepared their speech they deliver it for their electors. Here we do not speak for the electors: we speak to the question; and during a short debate of a few hours no one would think of making in this Chamber a set speech which would be but a repetition of what had been said by two or three preceding speakers. A member introducing any subject makes a speech, and is answered by another member, and the matter is rapidly exhausted, because when we discuss a question we address ourselves to it, whereas very often the Commoners address themselves to their electors.

For these reasons I make this motion.

3. THE SENATE AT WORK—DEBATE ON THE OLD AGE PENSIONS BILL

(*Canadian Senate Debates*, March 23, 1927, pp. 131-58.)

Hon. Mr. McMEANS: I am going to vote for the Bill, and for this reason: I want this issue to be put squarely before the people of this country. I want the people to understand that when this Bill is passed and has received the Royal Assent they will not get a pension until the province in which they reside endorses the legislation. When that issue is fairly and squarely put before the people of this country, then they will give a verdict and will demand a Pension Bill along proper lines, and of some benefit to the people and they will refuse to be any longer deceived by this camouflage. That is my reason for voting for this Bill. I want it to be clearly understood that I am in favour of a Pension Bill, but this Bill is not one to give the people pensions. At most, it might be said that any province that will come in under it will receive a grant which will be made at the expense of the other provinces. The honourable leader on this side of the House (Hon. W. B. Ross) said he did not think this was an issue before the people. I agree with him. I do not think the people had any idea of what this Bill really was. All they knew were the statements they heard from

the platform, that if they voted for the Liberal party they would get a pension. For these reasons, I am going to vote for the Bill.

Hon. J. J. DONNELLY: Honourable gentlemen, before this measure is voted upon, I wish briefly to explain the position that I intend to take. Unlike the honourable member from Winnipeg (Hon. Mr. McMeans), I am not in sympathy with the Bill. I feel that there are in this country many people who think they have the assurance that when they reach the age of seventy the Government will provide for them, and who, therefore, will not make very much effort to provide for their old age. I think that in this way the Bill places a premium upon extravagance and imposes a tax upon thrift. I think we all agree that the men who develop self-reliance and independence get the most out of life, make the best citizens, and build up the best country. I am disposed to think that the tendency of this Bill will be along other lines. It is, in my opinion, altogether too paternal.

Having said this, I might be expected to vote against the Bill. But we are in a peculiar position. I am one of those who believe that one of the principal functions of the Senate is to act as a check on hasty and ill-considered legislation. A similar measure was introduced last session, and by killing that Bill we exerted that check. We are in a very different position to-day. We have had a general election within the last six or seven months, and my opinion, arrived at from my own observation, is that this measure was an issue in the election. In that I do not altogether agree with the honourable leader on this side of the House. I think it was really an issue. I have too much respect for the electors of this country to think that they returned the present Government to power on its past record. I rather think they were influenced by the promises which were made, and this Bill is the outcome of one of them. . . .

I am in this position. I feel that this Bill comes before the Senate as the considered will of the people. It was approved in the last election; it has had practically the unanimous support of the members of the other House; and as a member of the Senate I do not feel disposed to vote against it. But, having voted against the Bill last session, and not approving of the principle of the Bill, I do not intend to stultify myself by voting for it now. I therefore have taken the decision to refrain from voting. When the old people realize that, while the Bill has passed both branches of Parliament and has received the Royal Assent, they are still without their money, the Government will have to think out some other answer than that the wicked Tories killed the Bill.

Hon. Mr. ROBERTSON: . . . Let us do our duty, and see that the situation is set right before the people. The only way in which that can be done, in my judgement, is to give this Bill a second reading, let it go to a committee of the whole House, let us approve of this

Bill and send it back to the House of Commons absolutely unamended, and then let the Government call the conference, and let it sit down with the provincial Governments and work out something that is feasible; and probably at the next session of the federal Parliament, by agreement with the provinces, there will be enacted some form of pension Bill which will be workable and to which we can all give our blessing and approval. Let us not stand in the way and say that we will kill this Bill on the second reading, or send it to some committee for a decent burial. If after what has been said in the other House we amend the Bill in any way and send it back with alterations, we may expect that the amendments will not be accepted and the Bill will be killed. Then the Government will not call the Provincial Conference, this Chamber will again be saddled with the alleged responsibility for what occurs, and the people will believe accordingly. Let us not be the goats, to use a homely phrase.

Hon. Mr. BEIQUÉ: Do I understand the honourable gentleman to express the opinion that it is the duty of members of this House not to make amendments, but to pass Bills as they come from the House of Commons?

Hon. Mr. ROBERTSON: I say to my honourable friend that in view of the statement that is said to have been made in the other House, and the refusal to agree to an amendment of the Bill there because they intended sending it to the Senate without change, so that the Senate would be faced with the necessity of accepting what it rejected last year—that in view of that threat, and the fact that there has been a general election and the people have passed upon this question, it would not be good form for us to reject or amend this legislation at this time, and so far as I am concerned I intend supporting the Bill on the second reading. I will support it in its entirety, although I absolutely disagree with some of its provisions. I believe that only by accepting the Bill without amendment can it become law and a conference of the provinces be brought about, as a result of which some concrete, feasible plan may be developed that will bring relief to the old people of this country, who sorely need it.

Hon. Mr. POIRIER: . . . The main reason why I am supporting this Bill is because it is essentially, in principle, a money Bill, and the Senate should reject no money Bill that comes from the other House—

Hon. Mr. DANIEL: What! That is a new doctrine.

Hon. Mr. POIRIER: —except it be tainted, extravagant, or encroaching upon the rights of the Provinces.

We stand pretty much in the position of the old courts of equity, which had no jurisdiction in taking up and reviewing a case passed upon by a court of law unless it was fraught with deceit or fraud. I say this Bill may be inopportune, previous, uncalled for; it may be loaded with all the objections that are made against it; the fact that it is a money Bill, and that it emanates from the other House from

which all money Bills do and must emanate, should be a sufficient passport for it to go through this House unchallenged.

It may be a mistake. The House of Commons has the constitutional right to make mistakes, and the Lord knows that this is not the first one they have perpetrated, if it be a mistake. Let us not forget that the other House represents directly the taxpayers of this country, while we—what and whom do we represent? Each of us holds his patent from the Crown, therefore it is hard to say that we directly represent the people, the taxpayers. Let those who represent them have the control of the finances of the country, and let us not step in and put on our veto except in cases of great gravity.

. . . My opinion is that we should pass this Bill as it is, unchanged, because if it is changed that action will be interpreted against us and the best of our sentiments of goodwill towards the Bill will be misconstrued, and we will be represented as standing in the way of the progress of this country. Let us not fall into that trap. Let us pass the Bill which is assumed by the Government, I hope in good faith. Let them try the application of it, and when it is being applied we can better see its defects and amend it if necessary.

Hon. N. A. BELCOURT: . . . I confess that I was—I was going to say shocked, but I will say that I was very disagreeably disappointed this afternoon at the spirit evinced by honourable gentlemen opposite in approaching and discussing this Bill. I think we were given this afternoon an example which I hope will not be repeated. With one exception, I think I may say that every honourable gentleman on the other side who addressed the Senate this afternoon did so in a partisan spirit and from a partisan point of view. I had hoped along with a great many other members of this House that the Senate had once and for all given up the idea of discussing Bills from the partisan point of view. I was therefore disagreeably disappointed, I say, in having put before us an example to which I must take exception. . . .

I have always entertained the idea—and the longer I live the more attached I become to it—that governments ought to confine themselves to governing. The people, I believe, specially on this continent, will be better off, will progress more steadily and more permanently, if governments confine their operations to what are really governmental functions. We are constantly departing from that safe and good rule. . . .

As the honourable gentleman from Montreal (Hon. G. G. Foster) has pointed out, under this measure we are usurping the functions of charitable and social institutions of different kinds which in the past have always been found quite sufficient to provide for the needs of old or infirm people. Why do that? Why not allow the citizens of Canada to continue to perform the social duties which as good neighbours and good citizens they owe to themselves mutually? The

societies organized for that purpose, it seems to me, have completely and well fulfilled all the necessities of the case. I am quite sure, speaking of the provinces of Quebec and Ontario—and in this I quite agree with the honourable gentleman from Montreal (Hon. G. G. Foster)—that there is in these provinces every possible means of affording all reasonable assistance to those who need it, whether because of old age or infirmity, incurable disease, or anything of that kind. Again, I repeat, let the citizens do that. I see no reason why the Government should assume any share in it at all.

. . . May I remind honourable gentlemen also that, according to the law of some of the provinces—in the province of Quebec, for instance, where it has always existed as part of the Civil Code, and in the province of Ontario, which I was glad to see recently adopt similar legislation—there is a duty cast on relatives, especially on children, to look after their parents if they are in want. Why should the State take away from the individual a duty which the law imposes upon him? Why should the State discharge that duty in his place? Nobody in the province of Quebec or in the province of Ontario need look for public charity; every one has a perfect right to ask that his children and relatives shall give him the necessities and requirements of life and the law has provided a legal remedy. It is besides a natural duty imposed upon us by the law of nature; and this duty has been sanctioned by the law of man.

I think I have said all that I need to say. I feel very much inclined, as I have felt before, to vote against the second reading of the Bill. I propose, however, not to do so. . . . I will vote for the second reading of the Bill in order that it may be referred to a committee which will hear the representatives of our insurance companies and will weigh and consider the proposals that have been placed before us by the honourable member for Montarville (Hon. Mr. Beaubien) and the honourable member for de Salaberry (Hon. Mr. Beique).

I thought I owed it to myself and to the House to explain why on this particular occasion I felt called upon to vote in favour of the second reading, because on a former occasion I voted differently.

Hon. F. B. BLACK: . . . I opposed the Bill last year, and I oppose it this year. I did so last year because I believed it was bad in principle, because there was no demand for it, and because it was not, from another standpoint, an old age pension scheme. I oppose it on the very same ground to-day. In the minds of many of us there may be a question as to whether a pension is a right or wrong thing, but that is not worth arguing, because we have passed the stage, for Anglo-Saxon countries, at all events, are very much interested in old age pensions, and I am quite convinced that Canada will follow along the same line. However, this Bill is not an old age pension Bill. . . .

Hon. J. D. TAYLOR: . . . I was opposed to this measure last year

because I regarded it, to use the vernacular, as a put-up-job on the Labour party in the House of Commons; I was opposed to it during the election period, because of the conviction that at that time it had become a put-up-job upon the electorate, a measure of cruel deceit to the aged people of British Columbia; and I am opposed to it this evening, although I intend to vote for it, for reasons which I will state.

Some Hon. SENATORS: Oh, oh.

Hon. Mr. TAYLOR: I am opposed to this measure this evening, and I intend to follow the brilliant example set for me across the House, by voting against my expressed conviction, because I regard it now as a put-up-job on the Senate of Canada. If I have the intention of voting for the second reading of the Bill, it is certainly not because of any intrinsic merits, or the sequence of events associated with its presentation here. I have noticed in connexion with the legislature of my own province, and in the argument before another House, that the reason put forward for presenting this Bill now in the acknowledged imperfect shape in which we have it, is the statement, which has been made, that to alter the Bill in any particular would be to risk its acceptance by the Senate. In other words, the promoters of the Bill, having been convinced by the logic offered by the Senate a year ago that the Bill was contrary to the principles held by the members of this honourable body, seem to be determined to make no concessions whatever; not because they think the Bill is perfect, but because an easy way of getting out of the awkward mess is to send the Bill up to this Chamber again in precisely the form in which we rejected it last year, in the hope that it will again meet a similar fate. For my part, taking the good advice offered by an honourable gentleman just now (Hon. Mr. Belcourt), to remove politics from our consideration, I decline to be a party to what I consider to be that brand of politics.

Hon. C. E. TANNER: Honourable gentlemen, I am like my honourable friend who has just resumed his seat, in part; I voted against this measure last year. But I intend to vote for it this year; that is where we differ. . . .

I think we all agree that this legislation is unworkable, and is not at all creditable to the Government of the day. They have had a whole year to work out a practical system of old age pensions. I think we are all agreed in this House that a sane, common-sense, practical system of old age pensions, including contributions, built on the British lines, would be a good thing; and I say it is not creditable to the Government that they have allowed a whole year to pass without doing anything practical in the matter, but have come back to Parliament with a half-baked measure such as is now proposed.

I do not go so far as my honourable friend, and say that it is a bad

measure. I do not think it is an immoral measure, or that it is wicked, but in my judgement it is defective and unworkable. Yet I am not going to vote against it because it is unworkable or defective, for several reasons. I recall that a year ago in this House we rejected a Bill which was the same as the one now before us; we gave the Government a year to consider, to think; in the meantime there were general elections in the country; we gave the people of Canada time to think, time to consider, and to judge whether our action was right or wrong, whether our judgement was to be approved of by them or not.

... Having done that, I think we can feel that we have done our duty very fairly. If the people have re-elected the same Government and sent them back to power, apparently saying to them: 'We endorse your action, and we want you to put through that Old Age Pensions Bill as you introduced it last year', I feel that we have a right to accept the position, and notwithstanding that we may believe the Bill to be defective, I believe we are fully justified in bowing before the judgement of the country as expressed in the general election. . . .

II

EFFORTS TO MAINTAIN THE IMPORTANCE OF THE SENATE

A. RIGHTS OF THE SENATE IN FINANCIAL LEGISLATION

I. REPORT OF SPECIAL COMMITTEE OF THE SENATE

(*Canadian Senate Journals*, 1918, pp. 193-4.)

The Senate,
Committee Room No. 70,
Thursday, 9th May, 1918.

The Special Committee appointed to consider the question of determining what are the rights of the Senate in matters of financial legislation, and whether under the provisions of The British North America Act, 1867, it is permissible, and to what extent, or forbidden, for the Senate to amend a Bill embodying financial clauses (Money Bill), have the honour to make their Second Report, as follows:

Your Committee beg to report that in the latter part of the last session of Parliament a similar Committee was appointed, but owing to the late date of appointment opportunity was not afforded the Committee for a full consideration of the Order of Reference. During the recess the Honourable W. B. Ross, a member of this Committee, prepared a memorandum dealing with the question, copy hereto attached, which memorandum has been carefully considered and adopted by this Committee. The following summing-up thereof is submitted as the conclusions of your Committee on the rights of the Senate in matters of financial legislation:

1. That the Senate of Canada has and always had since it was

created, the power to amend Bills originating in the Commons appropriating any part of the revenue or imposing a tax by reducing the amounts therein, but has not the right to increase the same without the consent of the Crown.

2. That this power was given as an essential part of the confederation contract.

3. That the practice of the Imperial Houses of Parliament in respect of money Bills is no part of the Constitution of the Dominion of Canada.

4. That the Senate in the past has repeatedly amended so-called money Bills, in some cases without protest from the Commons, while in other cases the Bills were allowed to pass, the Commons protesting or claiming that the Senate could not amend a money Bill.

5. That Rule 78 of the House of Commons of Canada claiming for that body powers and privileges in connexion with money Bills identical with those of the Imperial House of Commons is unwarranted under the provisions of The British North America Act, 1867.

6. That the Senate, as shown by The British North America Act as well as by the discussion in the Canadian Legislature on the Quebec Resolutions in addition to its general powers and duties, is specially empowered to safeguard the rights of the provincial organizations.

7. That besides general legislation, there are questions such as provincial subsidies, public lands in the western provinces and the rights of the provinces in connexion with pending railway legislation and the adjustment of the rights of the provinces thereunder likely to arise at any time, and it is important that the powers of the Senate relating thereto be thoroughly understood.

Your Committee are indebted to Messieurs Eugene Lafleur, K.C., Aimé Geoffrion, K.C., and John S. Ewart, K.C., prominent constitutional authorities, of Montreal and Ottawa, who have been good enough to forward their views on the question under consideration by your Committee. These opinions are appended hereto and form part of the Committee's Report.

All which is respectfully submitted.

W. B. Ross,
Chairman.

(Rule 78 of the House of Commons referred to above is now Rule 61, and reads as follows:

61. All aids and supplies granted to His Majesty by the Parliament of Canada, are the sole gift of the House of Commons, and all bills for granting such aids and supplies ought to begin with the House, as it is the undoubted right of the House to direct, limit, and appoint in all such bills, the ends, purposes, considerations, conditions, limitations and qualifications of such grants, which are not alterable by the Senate.)

2. LETTER ACCOMPANYING REPORT

(*Canadian Senate Journals*, 1918, pp. 202-3.)

Montreal, April 30, 1918.

The Honourable W. B. Ross,
The Senate, Ottawa, Ont.

Dear Sir,—We have been asked if in our opinion the Senate has the power to amend money Bills.

Sections 17 and 91 of the British North America Act place the Senate on exactly the same footing as the House of Commons as respects all legislation.

The only material derogation to this general rule is contained in section 53, which provides that Bills for appropriating any part of the public revenue or for imposing any tax or impost shall originate in the House of Commons.

The denial of the right to originate money Bills does not involve the denial of the right to amend them. Nothing therefore in the text of the British North America Act takes away the latter right from the Senate.

The first paragraph of the preamble where it is stated that the provinces desire to be united federally with a constitution *similar in principle* to that of the United Kingdom is relied on.

These words being in the preamble have much less importance than if they were in the text. Further it is obvious that similarity in principle does not mean identity in detail; the Canadian Constitution differs from the British Constitution in many and important respects; the similarity in principle referred to in the preamble is intended to exist only to the extent stated in the text.

The third paragraph of the preamble states that it is expedient not only that the Constitution of the legislative authority in the Dominion be provided for but also that the nature of the Executive Government therein be declared, and the text of the Act contains many sections which merely restate rules of the British Constitution such as section 53 already referred to.

If the above-mentioned words of the preamble meant that the British Constitution applies to Canada, except in so far as the text of the Act expressly derogates therefrom, the third paragraph of the preamble and all those sections, particularly section 53, would be useless or meaningless.

The consideration of how the rule limiting the powers of the House of Lords in the United Kingdom came to be adopted affords an additional argument in support of the view suggested by the text of the British North America Act.

In the early days there was a conflict between the British House of

Commons and the House of Lords on this question of the powers of the House of Lords in respect of money Bills.

In 1678 the Commons resolved:

That all aids and supplies and aids to His Majesty in Parliament are the sole gift of the Commons and that all Bills for the granting of any such aids and supplies ought to begin with the Commons and that it is the undoubted and sole right of the Commons to direct, limit and appoint in such Bills the ends, purposes, considerations, conditions, limitations and qualifications of such grants which ought not to be changed or altered by the House of Lords.

In 1693 the Lords resolved:

That the making of amendments and abatements of rates of Bills of Supply sent up from the House of Commons is a fundamental, inherent and undoubted right of the House of Peers from which their Lordships can never depart.

It is true that the Lords did not act in accordance with this resolution and tacitly submitted to the claim of the Commons, obviously to avoid a conflict with the latter House, but this practice was not the law, and this appears from the preamble of the House of Commons resolution of 1910 which announced the proposed legislation curtailing the powers of the Lords. (*May's Parliamentary Practice*, 12th edition, p. 518.)

It is remarkable that of the two restrictions on the rights of the Lords which the Commons by its resolution of 1678 tried to impose, namely: the denial of the right to originate and the denial of the right to amend money Bills, the British North America Act while mentioning the first in section 53 should not mention the second against which the Lords had specially protested.

If it had been the intention of the British Parliament to impose the two restrictions on the Senate it surely would have mentioned them both or if content to rely on the preamble as incorporating the whole British Constitution, it would have mentioned neither.

To those reasons might be added this further consideration that there is very little analogy between the Lords and the Senate. The Lords represent themselves, the Senate represents the Provinces. The Lords are not in an independent position as the House of Commons can use its influence over the Crown and induce it to add as many members as are needed to the House of Lords to obtain a favourable majority.

It is probably for that reason that section 18 of the British North America Act when dealing with the privileges, immunities, and powers of the Senate refers as the maximum for such privileges, immunities, and powers to those held, enjoyed, and exercised by the Imperial House of Commons (and not by the House of Lords) at the passing of the Act.

Under the circumstances, we are of the opinion that the Senate of

Canada may amend a money Bill originating in the House of Commons as fully as the House of Commons can do. Of course the powers of the Senate are limited to the same extent as those of the House of Commons by the fact that money Bills must be recommended by a message of the Governor-General.

Yours truly,
(Sgd.) E. LAFLEUR,
AIMÉ GEOFFRION.

3. ADDRESS OF HON. RAOUL DANDURAND

(*Canadian Senate Debates*, May 22, 1918, pp. 669-71.)

Hon. Mr. DANDURAND: Honourable gentlemen, I do not intend to cover the ground which the committee has gone over, and which, in the main, appears in the report which is before this Chamber. As a member of that committee I concurred in the report and approved its conclusions. . . . The House of Commons of Canada at its first session appointed a committee to help the Speaker in framing rules for the House and the Select Committee in its report, dated December 20, 1867, submitted the rules, including rule 78, which I have read, and which denies the right of the Upper Chamber to amend money Bills. This was a re-enactment of an old rule, adopted by the Canadian Parliament at its first session after the Constitution of 1791, denying to the Legislative Council the right to amend money Bills; but the reason which prompted the House of Assembly to affirm that right was based on the fact that it had the power to enforce it, because the Constitution of 1791 gave to the Government the right to appoint as many legislative councillors as it pleased. The Crown retained the swamping power by virtue of the constitution of 1791, and the House of Assembly could then declare to the Legislative Council what should be its limitations, because in conjunction with the Crown it could enforce its will upon the Upper Chamber. The House of Commons in England has been in a similar position. Through the swamping power it has always been able to threaten the House of Lords with forcing it to do its will and bidding by having the Crown appoint a certain number of Lords and by thus securing a majority. But far different is the situation of the House of Commons of Canada. It did pass that rule in December, 1867, denying the right of the Senate of Canada to amend money Bills; but how could it enforce its will—how did it enforce its will? It did not; it was powerless to do so. Since 1867 the Senate has in very many instances amended money Bills. I have been in this Chamber for twenty years, and we have, I will not say at every session, but in every Parliament, asserted our right to amend money Bills, and we have amended them and the amendments have generally been accepted by the House of Commons. Only last session we amended not merely an ordinary Bill containing

money clauses, but the Income Tax Bill itself. The annual supply Bills are the only important money Bills which the Senate has not amended. We have amended money Bills of all other classes that have come from the House of Commons to this Chamber. The definition of our powers is in accordance not only with the text of our constitution, but also with our practice. . . .

The right to amend money Bills, which the House of Commons by its rule No. 78 denies to this Chamber, is in general practice the same as the right to reject a money Bill, which right is not denied the Senate. The effect of our amending a Bill may be the same as if we rejected it. When we amend a money Bill, as we have very often done, it goes back to the House of Commons, and if the Commons disagrees with the Senate and the Senate insists upon its amendment, the Bill is dropped. It is true that the Commons has then taken the responsibility of rejecting the Bill as amended by the Senate, but there is no legislation passed, and the result is the same, as if we had rejected the Bill. . . .

I recognize that, though we may have equal powers with the House of Commons, they should be exercised by us in a different spirit. We have equal powers, but we have not the same mandate. If the Commons, when acting according to the letter and spirit of the Constitution, have a clear mandate from the country, their authority should go unchallenged in financial as in other matters. Our duty, I surmise, is to assure ourselves that the Commons have that clear mandate. If in this respect the Senate fulfils its duty seriously, it can play an important, a paramount part in the safeguarding of the federal Treasury. I claim that very often we have been individually convinced that the Commons, in disposing of the money and the credit of the country, has not given sufficient consideration to the general interests of Canada, and, in common with many of the most prominent citizens of Canada, who are concerned over the proper administration of the country, and who watch its expenditures with a careful eye, we have felt that the House of Commons was at times quite improvident. It is natural that we should see such things. When most of the members of the House of Commons are interested in obtaining votes of money for their constituencies, and when through pressure brought to bear upon the Cabinet or the Finance Minister they have succeeded in getting a share of the appropriation, how can they turn around and criticize similar expenditures, amounting in the aggregate to an extravagant sum? How can they criticize when they have been parties to that extravagance? Such things happen in times of prosperity, when the Treasury is buoyant and members feel that they can strengthen their position in their own constituency by obtaining a money vote for some questionable expenditure. Such things have happened in the granting of railway subsidies, which within my memory have hardly ever been opposed in the House of Commons.

Bills to grant subsidies have been brought in during the last days of the session and millions of money have been voted in the last forty-eight hours of the session, the Opposition, whether Liberal or Conservative, remaining dumb; and the public saw those immense sums of money being voted without any serious inquiry as to the need for the appropriation, because, I suppose, there were too many counties that could be influenced and to which it would be dangerous to deny those votes. This is what we have all been witnesses of; and I wonder if under those circumstances the Senate would not have been only doing its duty to the country in asserting its right to tackle those big money votes and to moderate them. We have often seen those votes being made in the last session of a Parliament. If the Senate had decided that, inasmuch as there was to be an election shortly and the people would have a chance to pronounce upon the votes proposed, they should be deferred until the first session of the new Parliament, perhaps those sums of money would never have been voted. The Senate should thus be enabled to relieve the pressure exerted upon the Minister of Finance and the Cabinet by their followers. . . .

(N.B. The most notable dispute in recent years between the two Houses on the powers of the Senate in financial legislation occurred in 1925 over the Home Bank Depositors Relief Bill. It resulted in an almost complete victory for the Senate. *Can. H. of C. Debates*, June 23, 25, 26, 1925, pp. 4753-74, 4878, 5056-64.)

B. REPRESENTATION OF THE MINISTRY IN THE SENATE

I. PROPOSED UNDER-SECRETARIES FOR THE DEPARTMENTS

(*Canadian Senate Debates*, January 30, 1908; pp. 187-207.)

Hon. Mr. Ross (Middlesex) moved:

That in the opinion of the Senate, the time has arrived for supplementing the executive government of Canada, by the appointment of under-secretaries to the more important departments of the public service, with duties and privileges as near as may be similar to those of the corresponding officers in the parliament of Great Britain.

. . . It is within the knowledge of this House, and within the experience of many hon. members, that Ministers are taxed in the discharge of public duties far beyond the bounds of human endurance in many cases, and certainly beyond the limit which would enable them to give to the country their best service. I am not complaining of the organization of the Government, nor of its administration. After an experience of over twenty years in the Ministry of the province of Ontario, I have, shall I say, almost a painful recollection of how much is expected of a Minister. In many senses his usefulness is impaired by the fact that he is obliged to give time and attention to matters of routine that under a different organization could be relegated either to his

associates, if they were more numerous, or to experts in the public service. . . .

What is the position of our Canadian Ministers at the present moment? Parliament is in session for about six months of the year. That necessarily occupies their close attention under our system. It cuts them off from the study and consideration of other questions very largely for at least half a year. Besides that, there are numerous interviews, numerous deputations, the preparation of Bills for the meeting of Parliament, by-elections, and numerous things which divert the attention of our Ministers from the larger questions which are being forced upon us from day to day, and from which they should be, to a large extent, relieved. For that reason I think there is a great deal of force in the view I am presenting, namely as far as practicable that every detail that can be as well attended to by a subordinate should be diverted from the attention of a Cabinet Minister. . . .

There is a distinction in England between a Cabinet Minister and a member of the administration, and while the Cabinet Ministers are comparatively few in number, the administration is large. . . . The Salisbury Cabinet consisted of twenty-one, larger than Mr. Gladstone's, and the administration consisted of sixty-two, thirty Lords and thirty-two Commoners. The Balfour Cabinet consisted of twenty-one also, and the administration of sixty, twenty Lords and forty Commoners. The Bannerman Cabinet consists of nineteen members, and the administration of fifty-nine; nineteen Lords and forty Commoners. . . . There are two principles running through the administration of the British Government. One is that all important departments have more than one representative in the House of Commons, and secondly that all important departments are as a rule represented by some member of the Cabinet in both Houses. . . .

. . . What would we gain by the adoption of Under-Secretaries? In the first place, we would secure the same results, I have no doubt, as they have in England. Young men fitted for administrative duties, perhaps, but not for Cabinet rank, could be used. There is a great deal of talent going to waste. I have no doubt there are in the House of Commons many young men who have not had the experience necessary to be admitted to the Cabinet, but who would make excellent administrators of some department; and there may be members of this Senate who are not able to give the time or the attention to the duties of a department, who could accept the less irksome duties of administration. We would then save a lot of material which is going to waste. We would arouse the ambition of many of our young men. . . . A position in the Cabinet is no doubt a spur. It is a spur to some men to get a seat in this House. Let us widen the opportunities for such a stimulus, and let us not allow men for a moment to drop their hands, thinking they have none of the qualities which would make for Cabinet rank. Let us test them, sift them, try them in minor

positions, and if they are found to be unfit, bring other men forward. It is a cruel thing to keep a Minister during the whole of a night, perhaps, to watch estimates when an Under-Secretary, a younger and less experienced but, perhaps, more vigorous man could discharge those duties for him, and besides it would expedite public business if these officers, or officers somewhat corresponding to those I have mentioned, were distributed between the two Houses. I see no reason in the world why a larger amount of legislation should not be initiated in this House. . . . There is no use disguising the fact that in the public mind, or in a large section of the public mind, the Senate is not regarded as a necessary appendage to public legislation, it is considered to be exceedingly inactive—inactive because it does so little. We could not under our present organization begin work until the House had passed the address. We passed it in a day, and it took the House of Commons nearly three weeks to pass it; and all this time, under our present organization, which I will discuss at a future time, the Senate had really nothing to do. Put Ministers here who will give us something to do, and when we have done our work well and to the credit of ourselves and to the benefit of the country, then give us more to do, and the result will be that public business will be dealt with more rapidly. . . .

2. REMOVAL OF CABINET MINISTERS FROM THE SENATE

(a) *Discussion in the House of Commons*

(*Canadian House of Commons Debates*, March 31, 1919, pp. 1002-8.)

Mr. WILLIAM D. EULER (Waterloo North) moved:

That in the opinion of this House, all Ministers of the Crown should be members of the House of Commons, or become such within a period of three months after their appointment to the Cabinet.

. . . Mr. Speaker, the resolution which I have offered has for its object the debarring from the Cabinet of members of the Senate, for what I consider to be the sufficient reason, that members of the Senate, not being elected, are not representative of, and not responsible to, the people. I am quite prepared to have some hon. gentleman say that the easiest way to accomplish that which is desired in the resolution would be to abolish the Senate entirely, and if any hon. members choose to offer a Bill in that regard, I for one would support it. I have not risen this evening with any intention of dealing with the Senate as a body, but it does appear to me that in these so-called democratic times a non-elective Senate is something of an anomaly in this country. . . .

Now, Mr. Speaker, as is well known, senators are not elected. They are merely the partisan appointees of the Prime Minister or of the political party which happens to be in power. That, I submit, Sir, is

not by any means an indication that the men so appointed possess the confidence of the country. Indeed it is only too true that exactly the reverse is the case in very many instances, and that men who have been rejected when they have offered themselves for election to the House of Commons are frequently appointed to the Senate merely as a reward for party service.

The responsibility and power of the Ministry are very great. During the past two years the power of the Cabinet has been greater even than the power of Parliament itself. That was during the War. As a matter of fact, the War Measures Act is still in force and the Government still retains that power. But even after the War Measures Act becomes null and void the power and influence of the Cabinet will still remain very great. Members of the Cabinet who are of sufficient calibre to deserve a position as responsible as that, wield a tremendous power not only in the formulating of policies, but also in the administration of the departments over which they have control.

. . . We have in the Cabinet at the present time no fewer than three members of the Senate; more, I think, than we ever had since we first enjoyed responsible government. First of all, we have the Leader of the Senate (Sir James Lougheed), who is Minister of the Department of Soldiers' Civil Re-establishment. This afternoon we had a very interesting and lengthy debate on the matter of the appointment of soldiers to positions in the Civil Service, and we shall have a great deal of that this year and in the years to come. It seems to me that a Minister holding the important portfolio of Soldiers' Civil Re-establishment should be present on the floor of this House to give his advice to members and to answer questions that may be put from time to time.

The same is true of the Minister of Labour, Hon. G. D. Robertson, who also is a member of the Senate and has not a seat in this House. One of the most difficult and important questions with which this country will have to deal in the future is the question of labour, therefore this Parliament will necessarily have to concern itself with legislation affecting labour. Old age pensions, pensions to widows, and legislation on matters of labour will have to be considered by this House in the very near future. I do not think that the Government is doing its duty to the people, particularly to the working men, in not having in this House, as head of the Department of Labour, a man who manifestly, by election, enjoys the confidence of the people whom he is supposed to represent.

Then I come to what everybody must consider the most glaring instance of the violation of the principles of responsible government that one could possibly conceive. And, by the way, I make these criticisms not at all in a personal sense, but only in so far as they affect the public service and the public good. We have as Postmaster-

General Hon. P. E. Blondin, a member of the Senate, a gentleman who in the elections of 1917 offered himself for election in two constituencies and was overwhelmingly defeated in both; in one by a majority of about 1,200 votes and in the other by a majority of no less than 6,500 votes, receiving himself only 500 votes in the constituency of Champlain. This gentleman is in charge of a department which employs about 10,000 persons, which has in its control the expenditure of something like \$18,000,000 a year. Yet, in the face of the fact that this gentleman was rejected by his constituents; in the face of the very evident fact that he does not possess the confidence of the electors of Canada, the Prime Minister has retained him in an office which, it will not be denied, should not be occupied by any one who is not responsible to the people and who does not occupy a seat in the House of Commons. The Postmaster-General is not answerable to Parliament; the same may be said of all members of the Senate who hold portfolios in the Cabinet. They are not on the floor of the House to answer questions or to pass their own estimates through Parliament.

We were told this afternoon in a return that the Postmaster-General is represented in this House by the President of the Privy Council (Mr. Rowell). I do not know whether that gentleman has informed himself very particularly as to the details of the Post Office Department; I doubt it very much. At the same time, most of us are willing to admit that the duties of the President of the Privy Council are so light that possibly he feels that the large honorarium that he receives may very well justify his giving some attention to the work of the Postmaster-General. But I do contend that the appointment of three members of the Senate to positions in the Ministry is the very negation of responsible government. In the case of the Office of the Postmaster-General it is nothing less than an arrogant defiance of the will of the people which this Parliament, if it dares to call its soul its own, should not tolerate any longer. . . .

Sir THOMAS WHITE (Acting Prime Minister): I have listened with close attention to the observations of my hon. friend (Mr. Euler) with respect to the motion now before the House, and if I have any general criticism to make of his remarks, as I understood them, it is his failure to appreciate the constitution as it is to-day, and the status of the Senate as a body of co-ordinate jurisdiction with this House. . . .

I think I would agree with my hon. friend that the representation of the Government in the Senate should always be limited as compared with that which it should and, I submit, must have in the House of Commons. Ever since confederation, however, it has been recognized by all administrations that the Government must be represented in the Senate for the reason that the Senate is a legislative body, that Bills originate with the Senate as well as with the Commons and that

the Senate must be a party to all legislation before it can become law. I do not know that any hard-and-fast principle has been adopted, but it has been generally recognized that there are certain portfolios which must belong to the Commons. For example, I cannot conceive of the Minister of Finance being a member of the Senate and not of the House of Commons, because, of course, he is dealing almost wholly with financial and fiscal measures which must originate in the House of Commons. With regard to the British constitutional system, it is to be observed that a member of the Government need not necessarily, according to the strict law of the Constitution, have a seat in the House of Commons or in the Senate. Frequently, and especially upon the formation of new Governments, a Minister is called into the counsels of the Government by the Prime Minister although he has not a seat in either House. In practice, of course, that situation could not be long maintained, and therefore I may dismiss that feature because, generally speaking, it is necessary that Ministers of the Government should have seats either in the House of Commons or in the Senate for the purpose of dealing with the legislation which is there being discussed, of expounding Government measures, and of informing the two Chambers as to Government policy. . . .

I took the trouble, in connexion with this resolution, to look up the practice of the various Ministries with regard to Senate representation, and my hon. friend is entirely in error in supposing that this Government is in any singular or anomalous position, much less one open to criticism, by reason of having three members in the Senate. In the administration of Sir John A. Macdonald, Sir Alexander Campbell was Minister of Justice and Leader of the Senate; and when Sir John A. Macdonald died, there were, I think, two members of his administration without portfolio in the Senate. My hon. friend will find that under the succeeding Prime Ministers, Sir John Abbott, Sir John Thompson, Sir Mackenzie Bowell, and Sir Charles Tupper, there was in the case of each administration a representation of two or three members of the Government in the Senate; and always, I believe, the Leader of the Senate, under the administrations of which I have spoken, was a member of the Government of the day. Further than that, Sir Mackenzie Bowell when Prime Minister was Leader of the Senate. Coming down to the Liberal administration of the late Right Hon. Sir Wilfrid Laurier—of whom I have always understood my hon. friend was a devoted follower and admirer—we find that instead of the number of members of the Government having been diminished in his régime it was if anything enlarged. . . .

. . . Under our system as it exists to-day, no other course is open to a Government but to have representation in the Senate. Bills originate in this House involving matters of Government policy. Bills also originate in the Senate involving matters of Government policy. For the dispatch of business it is very desirable that the

Government should be able to initiate Bills in the Senate as well as in the House of Commons if for no other reason than to save time. But even as to Bills originating in the House of Commons and which go to the Senate, they must be adopted there. The policy of the Government must be explained with respect to those Bills because the Senate must concur in them before they can finally receive the assent of the Governor-General and become law.

(b) *Statement of the Prime Minister, 1921*

(Cf. Chapter III, section I (A) (4) (b).)

3. PROPOSAL TO ALLOW CABINET MINISTERS TO SIT IN EITHER CHAMBER

(*Canadian House of Commons Debates*, March 21, 1921, pp. 1152-9.)

Hon. RODOLPHE LEMIEUX (Maisonneuve) moved:

That, in the opinion of this House, it is in the interest of good government, that Ministers of the Crown should be permitted to sit in either Chamber, whenever measures and policies are introduced affecting their respective departments.

. . . Mr. Speaker, we cannot afford to allow the Upper Chamber to be without representatives of the Government; we must face the situation that there will always be at least a leader representing the Government in that body, and occasions will arise when it will be necessary to have Cabinet Ministers in the Senate. I do think, however, that mostly all Cabinet Ministers should occupy seats in the popular chamber and that the less there are in the Upper Chamber the better for the Government and better for Canada. At all events, if any Cabinet Ministers have to sit in the Upper Chamber, it is to be hoped that the Government, whether Liberal, Conservative, or Agrarian, will always see to it that Ministers in charge of spending departments sit in the popular chamber. I think that is a sound principle. . . .

The Commons, Mr. Speaker, has been and is to-day the great inquest of the nation. To the Commons belong the most important problems of government. To the Commons must be announced the policies of the Government. Indeed, the House of Commons is the great lever of the British Constitution. True it is that no Bill, no Act of Parliament, is perfect or complete without the sanction of His Majesty the King; all measures are sanctioned by His Majesty the King, the House of Lords, and the House of Commons. But everybody feels that the great driving power in matters of legislation belongs to the House of Commons, and it is right that it should be so. . . .

But I do not see why a Minister sitting in the Upper Chamber or in the House of Commons should be debarred from appearing in the

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other Chamber without having a right to vote. I do not see why a Minister of the Crown sitting, for instance, in the Upper Chamber, should not have a right to appear before the House of Commons to explain the policies of his department and to answer questions when the estimates of his department are scrutinized in the House. Nor do I see why the gentlemen who occupy the Government benches in this House should not be allowed to appear in the Upper Chamber to give there such explanations as may be required of them. There is nothing new under the sun. This system which I am now propounding is the system followed in France, where it is not necessary that a Minister of the Republic should even be elected by the people, and I suppose that would suit many of my hon. friends who have, at the present moment, Cabinet aspirations. . . . Both Houses should have the same right, because I claim as a right, on the part of any member, that when a policy is presented to the House, if the Minister who has prepared, laid out, planned, and initiated that policy, sits in the other Chamber, he should be amenable here to explain that policy, to answer questions, to accept amendments. When the budget of such a Minister's department is being debated before this House—and this is the only branch of Parliament which can discuss and debate at length the budget of a department and move for its reduction at the request of a member, I think it is simply common sense that members of this House should have the right to summon the Minister whose policy is questioned or whose budget is criticized. I stated a moment ago that in such an occurrence I would not give to the Minister, belonging to the other Chamber and appearing before this House, a vote; but he would speak freely in the House; he would explain as many times as necessary, and he would, therefore, help in framing the legislation and in directing the policy of the Government which, in the final result, becomes the policy of Parliament.

Mr. MACLEAN (Halifax): Would the hon. member allow a Minister sitting in a Chamber other than the one to which he belongs to make a motion?

Mr. LEMIEUX: That, of course, is a question of detail which might be framed in the amendment which would be necessary to the rules of the House; but at first sight, I would say: No. I would say that he could suggest to one of his colleagues, or to any other member of the House, the main features of the motion, and he would be allowed to speak in support of it. I would not give him more power than he is entitled to. We, the members of the popular branch of Parliament, are vested with special powers; our rights, so to speak, are sacred. We hold those rights directly from the people; we have a right to discuss; we have a right to condemn; we have a right to amend; we have a right to denounce, under certain rules. . . . My object is to bring Ministers sitting, let us say, in the Senate, before the House of Commons, to explain their policies, to defend their esti-

mates and to accept whatever amendments are suggested by the House....

Right Hon. ARTHUR MEIGHEN (Prime Minister): . . . I followed closely the argument of the hon. member. He contended, with much emphasis, that it was unfair to Parliament that Ministers of important departments, and particularly spending departments, should have their seats in the Senate and not in the House of Commons; but my perception must be wrong if there was anything in the argument which he presented that would not apply to the Minister of any department in the service of the Crown.

Every department is a spending department—some, of course, much more so than others. The largest spending departments are by no means the three that now are served by Ministers in the Upper Chamber; but in so far as the spending of money is concerned that all comes before the Commons and the Commons alone. The Commons and the Commons alone must vote each and every individual item; and therefore, in that regard, the power of consideration and criticism is vested in this assembly and its opportunity for that is ample. From that standpoint I am not able to appreciate the difference between the wisdom of having a Minister at the head of a department sitting in the Senate and of having a Minister sitting here—the difference between a Minister sitting here and the Minister of another department sitting in the other House. I know not what department may be chosen to which the argument of the hon. gentleman would not, in the main, apply. If we take, for example, the Department of the Secretary of State and the Department of the Minister of Justice; these are not great spending departments, but they are large and important ones. They are departments having to do with the administration of affairs of vital and prominent concern, affairs in respect of which the representatives of the people must be in close and intimate touch from day to day; and there is no argument the hon. member has presented against the Postmaster-General being a member of the Upper House that would not equally apply to show that the Secretary of State, or that the Minister of Justice, should not be a member of that House. . . .

It seems to me that, while we have the bi-cameral system, there must be a number of Ministers in the Upper Chamber, or the Upper Chamber cannot serve even that share of the public duties which it now serves; minor, I must say, in very many respects to those served by this Chamber; it cannot serve even those, if we are ever still further to reduce the representation of the Government in that House. The hon. member argues, and argues well, that the bi-cameral system has many supporters in this country, has a very large proportion of public opinion behind it, and argues still more forcibly that whatever that proportion may be, it is very likely to continue in this country, in some form, for many years and decades to come. It is rooted in

considerations that go to the protection of minorities—considerations that are particularly applicable to conditions in this Dominion. Consequently, though its functions may not be as important as was anticipated by the fathers of confederation, nevertheless it is bound for many years to come to remain one of the three estates of this country.

Coming to the real logic of the resolution, it seeks to have this House affirm that Ministers of the Crown in this chamber should have the right to pass to the other Chamber 'whenever measures and policies are introduced affecting their respective departments' and speak thereon, and, similarly, that Ministers of the Crown in the other Chamber should, under like conditions, come here and enjoy the same privilege. I must say that much for which the hon. gentleman contends appeals to me, and I can see a very great deal of advantage indeed in such a system as he urges. On the other hand, there is very much to be considered before we launch definitely on any such scheme. One point was raised by the hon. member for Halifax (Mr. Maclean). For example, if a Minister of the Crown in the Senate is to be allowed to come to the Commons to speak in relation, say, to his own estimates, but not to make a motion or to vote, he virtually cannot conduct his estimates through this House at all, because every discussion in the passage of estimates arises on a motion, express or implied, that a certain vote appearing in the estimates be made by this House. He cannot make that motion, consequently it must be assumed to be made by some one else. He is here to discuss it. But many discussions arise in this Chamber where it would be very difficult to decide just whether it affected sufficiently the department over which presides the Minister having a seat in the Senate to warrant that Minister coming into this House and taking part in the debate. I presume it would be for the Speaker to decide just what the relationship was between the discussion and that department. But it would seem to me that if you go a certain length you must go all the way, and you must admit that a Minister in either House can speak in the other House in relation to any subject that he desires to discuss. I think there would be very many practical difficulties in drawing a line and saying, 'On subjects within a certain line you may come into the other House and address the Chair and the members thereof; but upon subjects beyond that line you must stay where you are.' Anyway, I do not know that there would be very much to be feared if a Minister were permitted to come into this House from the Senate and discuss any topic that is before us; or, vice versa, that a Minister might go from this House to the Senate and discuss any topic that is under discussion there. In practice it would be availed of only in such cases as seemed to call for the attention of the Minister in question in the other House. Very likely it would work out in that way and there would be very little abuse of the privilege. . . .

III

RECENT PROPOSALS FOR REFORMA. REVIEW OF RECENT REFORM PROPOSALS

(*Canadian House of Commons Debates*, March 9, 1925, pp. 916-19.)

Mr. J. T. SHAW: . . . I suggest that in operation the Senate is a partisan body; it is not independent. I do not mean totally independent of the public will, but not likely to bring to the consideration of every question a fair and impartial judgement, unfettered by partisan considerations and uninfluenced by party affiliations, with the courage to face unpopularity in its decisions. In this respect the Senate has failed. Moreover, when the Senate is of the same political complexion as the party in power, it is largely a useless body, except for revising purposes, and I suggest that such revision can be done in a far more effective and adequate way. When the Senate is of an opposite complexion to the party in power then it becomes in most cases a real hindrance to effective government, resulting sometimes in near legislative paralysis.

My next complaint is that the Senate does not reflect the varied national life of this country. I do not say, mind you, that the House of Commons does either. But it is natural to suppose that most hon. members secure their right to occupy a seat in the Senate by reason of attendance in this House or association with it, and the result is that, generally speaking, they are not representative of the various sections of our national life. Viscount Bryce in his *Modern Democracies* also points out that a senate to be really effective must represent all the main currents of our industrial, commercial, and social life—agriculture, commerce, manufacturing, and so on. I do not think any one who has given consideration to the subject would contend for a single moment that the political method of appointment conduces to a fair representation in the Senate of our national life.

Another objection which I would urge is that the Senate sits and awaits action by this House. We have an illustration of it at present; the Senate is waiting for what may fall from the table of the House of Commons in order to amend or change it. Now, charged as the Senate is under our federal system with high and important functions, surely there is ample opportunity for that body to engage its time profitably at this juncture when the whole country is being devitalized by sectional differences and when serious industrial strife is threatened. Surely the Senate might by a careful study of our economic, social, and industrial life, assist materially in solving the problems that now confront the Dominion.

Lastly, if you put the Senate on its lowest possible basis, that of a revising Chamber alone, then I say it does not even discharge that

duty adequately, because in the concluding stages of the session it is showered with a host of Bills from this House, and it must either throw them out or pass them with scant opportunity to give them careful consideration and intelligent revision. So on that basis alone I submit that the Senate is not an efficient revising body. . . .

Now, if there exist the constitutional defects as well as the defects in the exercise of its functions that I have pointed out, the next question naturally arises, what remedies are available? . . . There are three possible ways to meet this situation: First, abolition; secondly, strengthen the Chamber; thirdly, weaken it. With regard to the first, abolition is becoming increasingly popular. It is becoming increasingly popular, I am convinced, because people have not before them any other effective scheme, or any scheme which promises change or reform so far as the Senate is concerned. It arises largely because of the paucity of other schemes, and not because it is the best remedy. The advocates of abolition urge that the Senate is a drag upon democracy; that it is an intrenchment of special and privileged interests, and that any institution which is based upon a distrust of democracy is necessarily weak and should not be continued. Now, these advocates of abolition apply their theory equally to any scheme of government, be it the unitary system or the federal system. In that particular I think they are perhaps mistaken. I see no objection to applying the principle of abolition to a unitary form of government, but when it comes to a federal form of government with a second Chamber charged with the specific duties and obligations which I have mentioned, then I think it would be a mistake to insist on abolition. If abolition is to be the remedy, what organization, what institution, will preserve provincial rights under our system of government? What institution will preserve sectional rights? What institution will there be to preserve the established rights of minorities? Besides, I am not so sure that where a popular chamber is so engrossed in partisan controversy from time to time it has that judicial calm which is essential to the proper and expeditious disposal of all legislation. In addition to that, the Chamber—our Chamber for example—has not the opportunity for the social and economic study that is essential to the proper solution of many of our problems. However, the abolitionist says, in the words of that English publicist in the late 'eighties, 'Either mend it or end it'.

One other way of going about this matter is to make the Senate stronger, to cure its defects, to add strength to it. Several plans have been suggested; I propose to suggest only one or two, and that very briefly.

One suggestion is to make the Senate elective, to make it responsible to the people whose interests it is supposed to conserve and to preserve—to let the provinces themselves—the ones who are vitally interested, undertake the election of senators. By doing that you add

strength to the Senate, because if there is strength in this elective Chamber there will likewise be strength in an elective second Chamber. The difficulty pointed out by most writers on the subject is the likelihood of deadlock between the two Chambers, but with the experience of recent years—Australia, South Africa, Ireland—surely the people of this country should be able to fashion some system that will enable us to untangle readily any deadlocks that may occur.

Mr. MACLEAN (York): Would the Senate be elected by the provinces for life, or for a limited term?

Mr. SHAW: I think all writers on the subject agree that the senators, whether nominated or elected, should hold office only for a limited period of time. Now, that is one method, and the objection usually taken to it is that we already have too many elections in this country. We have federal elections, provincial elections, and to add another election would complicate our institutions and certainly disturb to a great extent the business affairs of this country. I do not think there is very much to that objection, because it would be very easy to arrange it so that the election for senators would fall at exactly the same time as the election for this House.

There are one or two methods based upon the nominative plan to which I want to refer. The first was proposed by a distinguished member of this House. I think because of that alone it is entitled to our serious consideration. The other reason which I think entitles it to our consideration is that it certainly is a thought-provoking scheme. I refer to the plan proposed in this House some two years ago by the Right Hon. Mr. Fielding, whose illness and consequent absence from this House I am sure we all deplore. This distinguished gentleman, after forty years of parliamentary experience in this country, proposed that all the senators should hold office by nomination, that half of them should be appointed by the federal Government, and the remaining half be appointed by the legislative assemblies of the various provinces. One can readily see that that plan would be an improvement upon our present system. But the right hon. gentleman only pays a sort of half allegiance to the principle of provincial rights. That would be the objection I would see to such a plan as that. If it is necessary that state rights should be preserved, if this federal part of our institutions is to be preserved, then the Senate should be chosen entirely by the provinces themselves. . . .

I have referred to two methods—to the method of abolition, and the method of strengthening. I now want to refer to the third method, and that is to reduce the Senate powers as they already exist. I said at the outset that the powers of the Senate except in money matters are coequal and coextensive with those of the Commons. They have the widest power of initiation in measures of reform, but I think I am fair in saying that they have seldom taken advantage of this power.

Now the suggestion along this line is to dilute, if you like, the veto power which now exists. The Senate now have an absolute veto power. Dilute that power until it becomes either a suspensory or a temporary power of veto. That is the plan that is followed in England. Such a scheme will reduce the Senate to comparative impotence. In connexion with the English scheme, if hon. gentlemen will read the Parliament Act of 1911, they will observe there one or two very interesting things. First of all, the Act itself in its preamble clearly indicates that the veto measure there taken, that is, the effort to make the absolute veto of the House of Lords a mere temporary veto, was only a preliminary step. The second and farther step was to create a popular House of Lords. I will read the preamble for the information of hon. members:

Whereas it is intended to substitute for the House of Lords as it at present exists a second Chamber constituted on a popular instead of hereditary basis, but such substitution cannot be immediately brought into operation—

Mr. MACLEAN (York): Where is that from?

Mr. SHAW: The preamble itself of the British Parliament Act of 1911. The Act goes on to very seriously curtail, to practically nullify the powers of the Lords so far as money Bills are concerned, and to provide that after the passage of any other public Bill by the House of Commons for three consecutive sessions during a period of two years, the Bill will automatically become law. The dilution of the veto power, therefore, is only a bridge, if you like, only a step along which we may go in one of two different ways—first towards abolition or secondly towards reform, one or the other. Therein lies the value only, in my judgement, of the veto dilution. It cannot give any permanent reform; but it does meet the present and pressing situation. That was the situation in connexion with the Parliament Act in the Old Country, and that was the purpose entirely. I do not know, however, if they have since followed along that track for the purpose of securing a popular second chamber in that country.

The ex-Prime Minister of England, Mr. Ramsay MacDonald, has an idea also in connexion with Senate reform. He wants to reduce the Senate to a revising Chamber, and to a revising Chamber only. He suggests that it be lessened in number, that it consist entirely of law lords and parliamentary legal draftsmen, and that this body have power, not to change principles at all, but simply to improve the technique of legislation. These are, in short, some of the many schemes which are proposed for Senate reform. The question, after all, it seems to me, comes down to this, as indicated by one writer on the subject: 'Do you want an elder brother who is going to advise, who is going to suggest, who is, if necessary, going to check his rash brother, or do you want merely a clerk who will simply cross the t's and dot the i's?' . . .

B. THE LIBERAL PROPOSAL OF 1924

I. 'SENATE REFORM'

(*Montreal Gazette*, October 27, 1927. Editorial)

The announced intention of the Government to place the question of Senate reform upon the agenda of the interprovincial conference has given rise to considerable discussion among Canadian newspapers, and it is quite proper that there should be such discussion. There has been no hint, however, of the plan of reform which the Government will put before the conference, nor is there any certainty that the Government has a plan. In the earlier period of Mr. King's hostility towards the Upper House the threatened 'reform' looked very like abolition. The tone of the Prime Minister, in his references to the Senate and its functions, has moderated, and nobody—not even, perhaps, Mr. King himself—knows exactly upon what basis and to what end the campaign for reform is now being conducted. In the session of 1924, in a condition of exasperation over the rejection of certain Bills by the Senate, the Prime Minister made the following statement:¹

The time has come when the Commons in Canada should seek to gain rights and privileges with respect to legislation which owes its origin to this Chamber, similar to those which have been obtained by the House of Commons in the Parliament at Westminster.

I may say that the Government had under consideration, prior to the opening of this session, legislation with this end in view, but it was anxious that the public should feel perfectly assured of the necessity of it before pressing it on the attention of Parliament.

Honourable members will recall that at the close of last session and at the close of the preceding session, Bills which were passed by this House, and which touched matters that are vital to the electorate, failed of enactment owing to the action of the Senate Chamber. This year we have cases of Bills that have passed this House at three separate sessions of Parliament, and which have been rejected each time by the Second Chamber.

I think we owe it to the people of the country to see to the supremacy of this elective Chamber in Parliament with respect to laws of this kind. I would assure the House that when Parliament reassembles, steps will be taken by the Government to obtain, if possible, means whereby Bills may pass, by and with the consent of the House of Commons, under conditions similar in principle to those which have been sanctioned by the Parliament of the United Kingdom.

Pressed for a more definite explanation of his intentions, Mr. King replied that the matter would be considered by the Government during the parliamentary recess; but when the recess came, and with it a widespread discussion of the reform proposal, the Government made the discovery that the matter was one in regard to which the

¹ *Can. H. of C. Debates*, July 19, 1924, pp. 4872-3.

provinces would have something to say. The idea may or may not have been new to Mr. King and his colleagues, but it was of sufficient importance to affect their course, and the calling of a provincial conference was foreshadowed in the Speech from the Throne at the following session. No such conference was called, however, at that time, and at the end of the session an attempt by the Leader of the Opposition to obtain a clear statement of the Prime Minister's intentions evoked nothing better than a vague and non-committal reply. It is conceivable, if not probable, that Mr. King's attitude toward the Senate has undergone some change through circumstances. We seem to recall a campaign declaration in which he found and expressed encouragement in the prospect of 'reform' by natural process, 'reform' in this instance being the gradual restoration of a Liberal majority in the Upper House. In the first few years after the elections of 1896, this same question of Senate reform arose, and from similar conditions, but time justified his reputation as a great healer, and a Senate dominated by a majority owing allegiance to the Government in office was regarded and accepted as a 'reformed' Senate. The present Government is steadily increasing its support in the Second Chamber, and the enthusiasm for reform may be expected to decline as the political complexion of the Senate changes. But Mr. King and his friends must keep up appearances, and hence the solemn submission of the question of Senate reform to the forthcoming conference with the provinces, a submission made in the knowledge that the provinces most certainly will not consent to any reform proposition which will affect the constitutional status of the Senate or defeat the purposes for which the Senate was created.

The Toronto *Globe*, recalling the statement made by the Prime Minister in 1924, voices the hope that the Government will consider the coming conference as 'an opportunity to consolidate public opinion and gain courage for Senate reform'. This is rather hazy, but it expresses, probably, the attitude of the Prime Minister himself, in that it does not promise real action by the conference. If Mr. King has abandoned his 1924 position, he has done wisely. The authority gained by the British House of Commons at the expense of the House of Lords does not afford a basis upon which a plan of Senate reform in this country can safely be founded. The Canadian Senate occupies a place in the Canadian parliamentary system which has to do with conditions peculiar to this country and which were regarded as of very great importance by the Fathers of Confederation. The Canadian Senate is something more than a second legislative Chamber. It functions, and was intended to function, as a safeguard for the provinces, for the smaller provinces particularly, and for the minorities in all of them. It possesses and exercises just that measure of party independence which enables it to reject or modify legislation passed in haste by the House of Commons in response to a supposedly

'popular' demand or the noise of the party whip. It is a very necessary branch of Parliament, and the conference, we believe, will so declare.

2. RESOLUTION OF THE LEGISLATIVE ASSEMBLY OF QUEBEC

(*Quebec Legislative Assembly Journals*, 1925, pp. 370-1.)

Mr. Sauvé moved, seconded by Mr. Gault, and the Question being proposed, That it be resolved, That owing to the fact that it is of the highest importance for our province to keep intact in the British North America Act whatever tends to assure the maintenance of its autonomy, its institutions and its legislature, as well as respect for the rights of minorities;

This House considers that the Senate and the Legislative Council should preserve the powers which have been conferred upon them by the Constitution, and that the choice of their members should always be made for the purpose of giving to these two bodies the independence and powers intended and proclaimed by the authors of confederation.

And a Debate arising thereupon,

The Honourable Mr. Galipeault moved in amendment, seconded by the Honourable Mr. Moreau,

That all the words after 'That' to the end of the question be left out and replaced by the following:

"This House is of the opinion that the creation of two Houses was one of the essential conditions of the Pact of Confederation. It expresses its satisfaction that the Parliament of Canada, before considering any change relating to the Constitution and powers of the Senate, should have approved the project of the Government of Canada to call a conference between all the Provinces of the Dominion in order to study the opportunity of a change that could be made only with the consent of all the provinces.

"This House also expresses its confidence that the Government of this Province is well able to protect and safeguard the rights, privileges and prerogatives granted to the provinces by our Constitution especially with respect to the rights guaranteed to the minorities."

And the question being put on the amendment; the House divided: . . .

So it resolved in the affirmative.

Then the question being put on the main motion, as amended; the House divided and it was resolved in the affirmative.

3. REPORT OF THE DOMINION-PROVINCIAL CONFERENCE, 1927

(*Canadian Sessional Papers*, 1928, No. 69, pp. 10-11.)

The Dominion-Provincial Conference devoted its entire afternoon session to-day to an extensive and highly diversified discussion of the subject of Senate Reform. While on the question of 'abolishing'

the Senate the members of the conference were unanimous in opposition, and while there was practical unanimity as against the principle of an elective Senate there was a considerable conflict of opinion on many of the other suggestions of reform which have been common currency in the Dominion for many years past, and which are continually cropping up in Parliament and elsewhere.

The discussion in which the Premiers of all the provinces participated and which was introduced by an historical review presented by Hon. Ernest Lapointe, Minister of Justice, was carried on on a very high plane, and indicated that delegates had given careful thought and much original attention to the much-vexed question. At the conclusion of the discussion Mr. Lapointe stated that the Government would take careful cognizance of the views put forward.

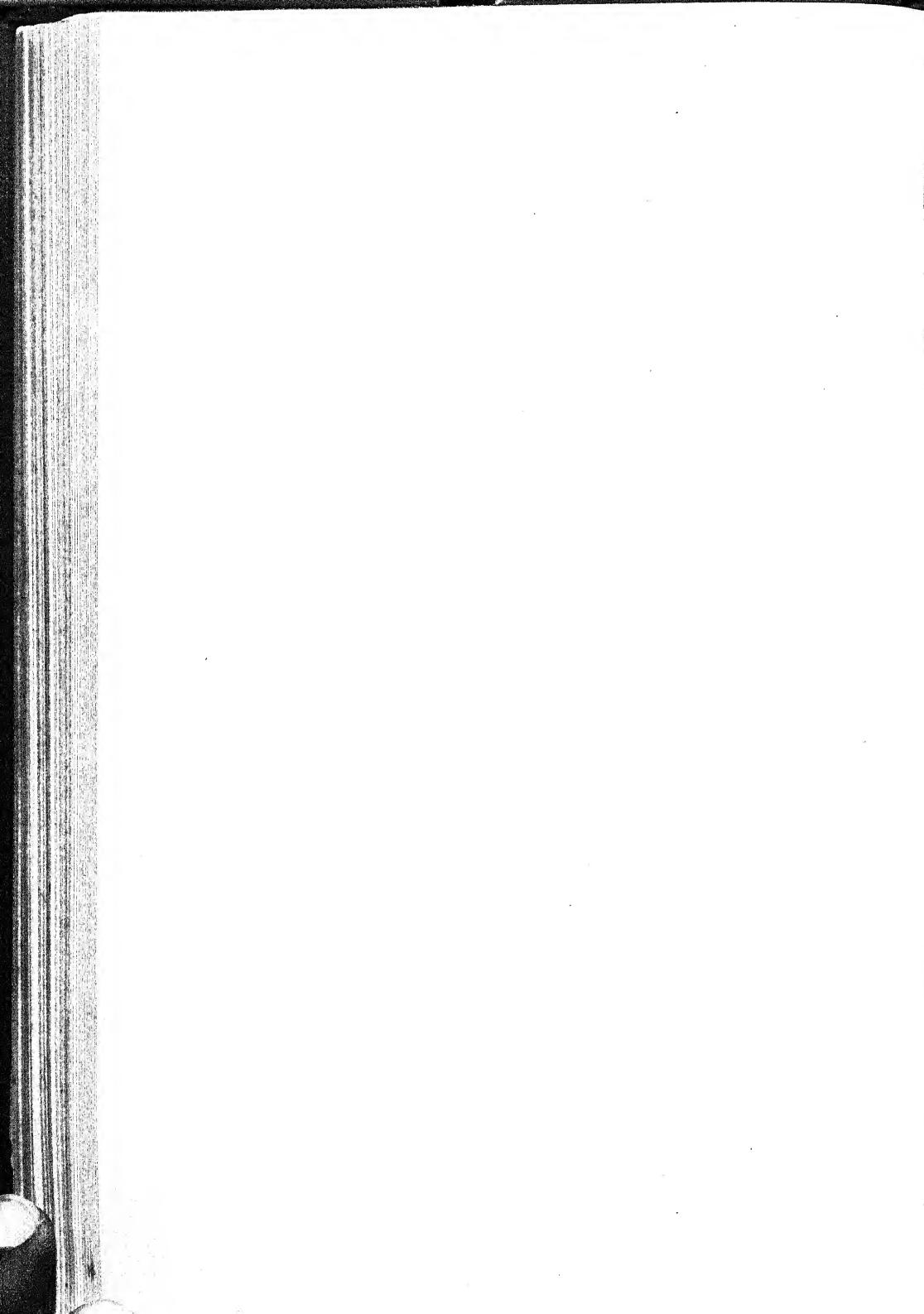
To-morrow the conference will undertake consideration of item 2 of the Agenda which deals with 'Procedure in amending the British North America Act'.

In introducing the question of Senate Reform this afternoon Mr. Lapointe stated that the Government had virtually been instructed by the House of Commons on March 9, 1925, to submit the question to a provincial conference. The resolution passed on that date was to the effect that the Senate as at present constituted was not of the greatest advantage to Canada, and that the question of amending the British North America Act in respect to the powers and Constitution of the Upper Chamber should be submitted to a conference. This resolution was carried by a vote of 120 to 39. During the same session there was a paragraph in the Speech from the Throne referring to the matter.

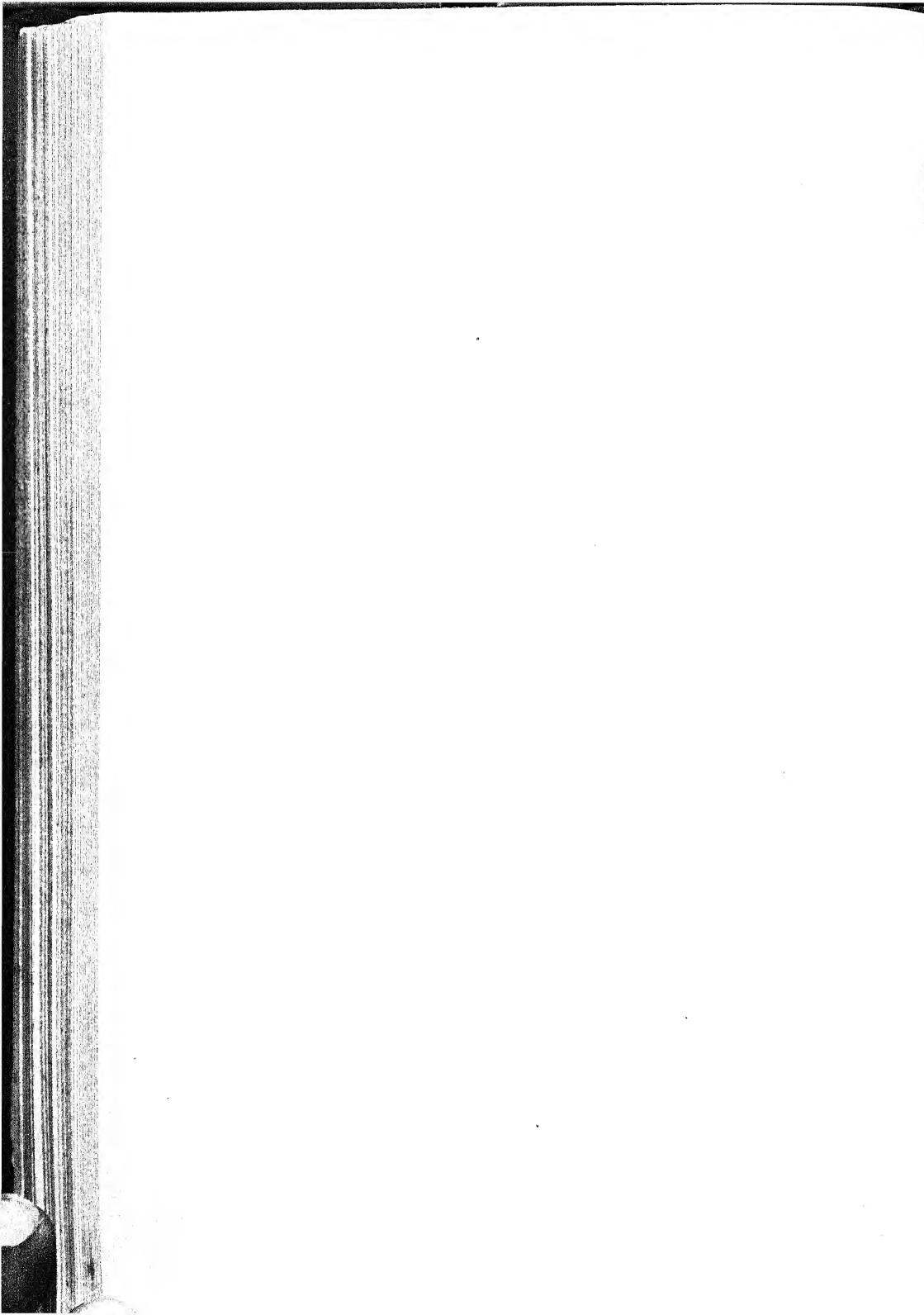
The Minister in his review cited the many and varied proposals which had been made from time to time with respect to the Upper House. Among these proposals were: First, abolition; second, the adoption of the elective principle direct or indirect; third, a combination of both the appointive and elective principles; fourth, a fixed and limited term of office; fifth, an age limit with possible superannuation; and sixth, a bringing of relations between Canadian Upper and Lower Chambers into accord with the relations between the House of Commons and the House of Lords in Great Britain. This latter has reference to the powers of the Upper House in the matter of vetoing or amending money or general public Bills.

It may be stated that the question of abolition had not a single backer in the conference. A comparatively small body of opinion favoured some change which might bring the Upper Chamber more closely in contact with the electorate, though this was regarded as at variance with the British system of government upon which the Canadian system is based. With respect to a fixed term of office, and an age limit, there was a wide divergence of opinion, these proposals not being generally regarded as vital when the question of reform is being considered.

The British system under which in 1911 the powers of the House of Lords with respect to money and general Bills initiated and passed in the representative Chamber were restricted was discussed at considerable length during the conference, while reference was also made to the systems existing in the other Dominions of the Empire. Throughout the discussion the right of the provinces to be consulted on such an important matter as this was frequently emphasized. While there was a strong body of opinion in favour of any reforms which might strengthen the general machinery of Parliament there was no attempt on the part of any speaker to minimize the value of a Second Chamber. . . .



CHAPTER SIX
THE CIVIL SERVICE



THE CIVIL SERVICE

At last the Dodo said, 'Everybody has won, and all must have prizes.'
'But who is to give the prizes?' quite a chorus of voices asked.

'Why, *she*, of course,' said the Dodo, pointing to Alice with one finger; and the whole party at once crowded round her, calling out, in a confused way, 'Prizes! Prizes!'—*Alice's Adventures in Wonderland*.

THE Canadian civil service has needed more investigation and more improvement than any other branch of the Government. It has happily received both. Its history since confederation has been punctuated with Royal Commissions and other inquisitorial bodies, whose reports were frequently followed by legislation which embodied to a varying degree the recommendations which had been made. But, whether implemented or not, these reports give an accurate description of the condition of the service at different periods and the reforms which at those times appeared necessary or feasible. Material for study is thus readily found; and the chief task is the selection of those reports whose excellence or whose influence on subsequent changes makes them the most noteworthy.

The outstanding characteristic of the Canadian civil service during the first forty years of its history was the manner in which political patronage controlled every phase of its life. Appointments, promotions, salaries, discipline, transfers, and dismissals were all affected by party influence, and the service was inefficient and indifferent as a consequence. In 1907 a Royal Commission, the fifth investigating body since 1867, was appointed to inquire into the whole problem. Its report not only gave an excellent description of the service at that time, but made recommendations for reform which provided the basis for the statute which was passed in the following year. This Act placed the Inside Service under the merit system, but left untouched the offices outside Ottawa (Section I).

In 1912 Sir George Murray presented what is, beyond any doubt, the most suggestive report in the history of the Canadian service. Unfortunately its recommendations were never carried out, and its influence on the administration has been slight (Section II). The reform of the Outside Service occurred in 1918, and a number of American 'experts' were imported to classify all officials and make the new scheme

workable. The result was the production of a revolutionary document known as the Report of Transmission, which succeeded (through a later Act in 1919) in upsetting all the principles of organization which had previously been accepted as fundamental (Section III).

The Acts of 1918 and 1919, while they did not eliminate patronage completely, dealt it so severe a blow that it can never again attain its old predominance over the service. Political influence still persists in some positions, its outbreak must still be watched for and circumvented, and it will doubtless make occasional gains and sustain occasional losses. But the old rule of patronage is over; and the most urgent single problem which confronts the service to-day is organization. The negative effort of keeping patronage out has been supplanted by the positive effort of increasing the efficiency of the personnel. This change of emphasis is most noticeable in the report of the latest civil service investigation, the Royal Commission on Technical and Professional Services (Section IV).

I

REPORT OF THE ROYAL COMMISSION ON THE CIVIL
SERVICE, 1907-8

(*Canadian Sessional Papers*, 1907-8, No. 29a, pp. 9-46.)

To His Excellency the Governor-General of Canada in Council.

MAY IT PLEASE YOUR EXCELLENCY :

The Commissioners appointed under the Commission from Your Excellency to inquire into and report upon the operation of the Act respecting the Civil Service of Canada and kindred legislation; the services and compensation of officials of the Government; and other specified subjects including any matter relative to the service which, in the opinion of the Commissioners, requires consideration, have the honour to report as follows : . . .

To begin with, the principles laid down in the Civil Service Act are that in the minor positions the preliminary and qualifying examinations shall be passed for entrance into the public service, but several appointments and many promotions are exempted from the provisions of the Act.

In the appropriations granted by Parliament for the year ending 31st March, 1906, during the last session of Parliament, over fifty votes were passed with the saving clause 'Notwithstanding anything to the contrary in the Civil Service Act'; and as it is known to the Commissioners that many of the votes not having that clause attached to them now have had it in previous years, it is the belief of the Commissioners that hardly a vote to pay the several classes of the public service has been passed, during one session or another by Parliament, without adding the limitation already noted.

The Commissioners find that in the working of the public service there is a constant attempt to evade the examinations by grading under other names certain classes of officials whose classification is not laid down in the Civil Service Act—as, for example, the officials called examining officers in the outside service of the Customs Department. The Commissioners also find that in order to meet the pressure brought upon the several departments by influential politicians to take on assistants, officials who have not passed the examinations are employed temporarily and are called labourers. Patronage seems to run more or less through every department of the public service. It was the universal feeling amongst the officials who gave evidence before the Commissioners that this patronage evil was the curse of the public service. Many of the witnesses were very frank on this subject, and the Commissioners earnestly recommend that all persons who are interested in the maintenance at a high state of efficiency of

the administration of the affairs of the Dominion should very carefully consider the evidence submitted on this point with this report.

The Commissioners have had it brought painfully to their notice that in the great development which has taken place in the last few years in the Dominion, the character and quality of the male candidates entering the service has declined. Having no inducements held out to them to remain in the service the better class of men stay but a short time and leave to better themselves. The Commissioners see with regret that in many parts of the Dominion able and worthy young men, attracted by high emoluments, have left the service. It is becoming more and more difficult to fill their places.

The Commissioners have also to point out that as far as regards the Civil Service Act the officials embraced in the terms of the Act are limited in number. At Ottawa 350 employees of the Department of the Interior are outside the terms of the Act. A very great number are also outside the provisions of the Act in the Departments of Agriculture, Marine and Fisheries, Public Works, and Railways and Canals. This prevails more or less in the other departments. Only three departments in the outside service—Customs, Inland Revenue, and Post Office—are included in the schedule under the Act, and while, as has been pointed out, many officials in Ottawa are excluded, the same remark applies with greater force to the members of the public service employed elsewhere than at Ottawa. No Dominion Lands Agent, no Indian Agent, no officer of the Intercolonial Railway, no outside officer of the Public Works Department is under the provisions of the Act, and members of the Northwest Mounted Police, together with many other sets of officials, are excluded from its provisions. In fact, the terms of the Act only bring under review a very limited number of the members of the outside service and probably about one-half of the members employed at the seat of Government.

The Commissioners also beg to point out that in the list of passed candidates published in the *Canada Gazette* no attention is given to merit. The candidates are gazetted alphabetically. No doubt it has happened that the candidates who have just fluked through the examination by means of greater political influence have received appointments over the heads of more worthy and better qualified candidates.

In the matter of promotions the same patronage fear is apparent. Your Commissioners found in their rounds that a collector of customs, a city postmaster, a post-office inspector, and others were appointed politically. The recent appointment of a postmaster at Kingston was on the recommendation of the Patronage Committee; the last appointment to the postmastership at Montreal, the most important in the Dominion, was given to an aged member of Parliament, sixty-seven years old.

As the almost universal practice is that no person is promoted out of his district and transferred to higher duties in another place, and that with few exceptions no person is promoted out of his class, it follows that young men, entering the public service in the several divisions to which they have been appointed, see that however hard they may work, and whatever intelligence they bring to bear upon their duties, there is no chance of getting out of the class to which they are appointed. Your Commissioners have been told and believe that promotions have been made as a matter of politics, not in every case, but in many cases, and that people have been brought in from the outside over the heads of men who have given their lifetime to the departments, to fill the few positions of any superiority in the public service. . . .

. . . The provisions of the Civil Service Act and its amendments have not made the service any better; in fact, the Act has been so amended, re-amended, and whittled down, that the public service, the Commissioners believe, not only at Ottawa but elsewhere throughout the Dominion, has fallen back during the last fifteen years.

In making these remarks the Commissioners do not wish it to be considered that any blame is to be attached in particular to either of the political parties who in turn have administered the Government. It is the political element in the Act which, from time to time, has become more aggressive and which has steadily tended to deteriorate the public service. It would seem to the Commissioners that the great prosperity of the country during the last fifteen years has been such that able men who were formerly attracted to the service of the State have now ceased to look to the rewards of that service and have turned their attention to other avocations in which they see prospects of higher emoluments, with the result that inefficient and inferior men, unable to obtain better positions in the outside world, through political operations and other means, have been brought into the service; whatever the cause the tendency is more and more to lower the standard of the civil service with the consequent detriment to the business of the State. . . .

. . . As a rule your Commissioners found in the outside service that politics enter into every appointment, and politicians on the spot interest themselves not only in the appointments but in subsequent promotions of officers. While at Ottawa the departments generally are administered with a good consideration for the public interest, yet in the outside service the politics of the party is of greater importance in making appointments and promotions than the public interests of the Dominion. Practically in no case is it possible to fill a vacancy in one locality by a transfer from another. Each locality is separately guarded, and as the high appointments are all political and the subordinate classes are so graded that it is difficult to get rid of the entanglement caused by multiplication of grades, and, as generally

speaking the people who enter the outside service of the several departments are considered as fixed in the several branches in which they have entered, promotion in that part of the service has become almost a nullity. How to get over this troubled state of affairs has become one of the problems to which your Commissioners have given most serious attention.

In the outside service those who have the 'political pull' use it for all it is worth; they pass by their superior officers and bring pressure to procure anything that may prove to their advantage. To get over the difficulties which constantly arise and to circumvent the politicians, the higher officials, being in constant dread of the latter, have evaded the terms of the Civil Service Act by employing officials designated as labourers or examiners or some other title, and have tried to get their offices into good working order. As a rule the officials in the outside service are without hope, and the majority of them are in dire need. Details thereof brought to the notice of the Commissioners have been pitiful in the extreme. The Commissioners have had printed with the evidence of each department the memorials of officials who have pressed for recognition of claims. The examination of their grievances the Commissioners have not considered to fall within their functions, but they earnestly commend to the chief officers of the several departments at Ottawa the consideration of the memorials attached to the evidence with a view to inquiry and rectification if desirable.

Your Commissioners have now finally to bring to the consideration of Your Excellency in Council the conclusions at which they have arrived. It has been pointed out that as far as salaries are concerned the higher officials, such as deputy heads, are underpaid in proportion to the emoluments derived by persons in outside avocations. Your Commissioners have pointed out what they consider should be the normal salary of a deputy head, but even in the case of deputy heads, although it can scarcely be said that no one department is unimportant, yet there are degrees of importance amongst the departments; and while the salary mentioned should be, in the opinion of the Commissioners, the normal salary, yet in special cases the Commissioners consider special emoluments should be given.

Coming to the question of classification your Commissioners have already pointed out that the classification at present existing is mostly disregarded. Officials are made chief clerks from length of service without change of duties. In some departments the number of chief clerks is much in excess in comparison with other departments. In the opinion of your Commissioners there should be, below the deputy heads, a rank of officers having special and technical qualifications, such as the officers of the Experimental Farms, engineers, architects, &c. Below these there should be a chief for each branch as

Accountant, Chief of Correspondence, Contracts, Engineering, &c., or any other important special work. Below these there should only be the rank and file of clerks without any special name unless it be the Writer Class.

In the matter of pay and promotion, every officer in the service should be treated on his merits. When a young man of great efficiency, who gives indication of force of character, appears it is surely to the advantage of the country that it should get the full benefit of his capacity as soon as possible. To secure this he should have swift promotion instead of having obstacles thrown in his course by narrow official regulations and limitations. Each technical or special officer or agent should have his duties clearly defined and he should be held to a strict responsibility for their efficient performance. Letters connected with his special work should be answered and signed by him as if he were solely responsible, and only countersigned (if thought necessary) by the deputy. Moreover, the Commissioners regard it of great importance that in each department there should be framed a complete code of rules and regulations for the carrying on of all the work of the department, and every officer of the department should be required to make himself familiar with this code.

Your Commissioners are of opinion that the service should be entirely free from political favouritism or patronage; that appointments should only be made by merit after competitive examination; and, for that purpose, a permanent Commission of three officials should be created to deal with the question of the service; that this Commission should be entrusted with all examinations in connexion with the service; that they should cause different examinations to be made in the different subjects required by the several classes employed in the civil service. To illustrate the meaning and taking, for instance, the Department of Agriculture, your Commissioners find that the Civil Service Commission in Great Britain require examinations from the veterinary staff in pathology and bacteriology and also into the Diseases of Animals Act; while in the Botanical Gardens they require examinations in systematic and structural botany; in the Customs there is required, in the case of a second-class clerk, lower section, for port service an examination in inorganic chemistry with elements of physics; in the Inland Revenue in Great Britain, besides ordinary subjects, geometry and elementary chemistry are considered; in the Public Works office examinations in estimates and specifications, the use and properties of materials and survey and levelling are required. In a word, in every distinct service in the Imperial Government an examination is instituted suitable to the particular service. . . .

Your Commissioners, in conclusion, cannot but express their sense of the high importance of the civil service and the necessity of doing everything possible to improve it. While there are many

conscientious, hard-working, and efficient men in it, it cannot be denied that there are some otherwise. It cannot be doubted either that it is a much more difficult proposition to preserve a uniformly high state of efficiency in a government staff than in the ordinary work of the world carried on by money-making organizations. This, your Commissioners think, is generally recognized, but to achieve any real success in either field the supreme necessity is character which above all means conscience. No Government can ignore this and live. While demanding the highest character they should do everything possible to develop it, and one of the first things necessary is to see that its servants can at least live in a moderate degree of comfort, and that after that a career be opened to every one in the service in which the rewards will be justly proportioned to the value of the service rendered.

All of which is respectfully submitted.

J. M. COURTNEY,
THOS. FYSHE,
P. J. BAZIN.

Ottawa, Ont.,
February 28th, 1908.

II

REPORT OF SIR GEORGE MURRAY ON THE ORGANIZATION OF THE PUBLIC SERVICE OF CANADA, 1912

(*Canadian Sessional Papers, 1913, No. 57a, pp. 12-27.*)

(a) THE MANNER IN WHICH APPOINTMENTS TO THE PUBLIC SERVICE ARE MADE

(51) There are . . . three distinct types of examination for first appointments in the Inside Service; namely, that for Subdivision B of the Second Division, which was intended to correspond with an education approaching the University standard, but is in fact scarcely so high; that for Subdivision B of the Third Division, which represents an education corresponding roughly with that of a High School; and that for the lower grades, which is of an elementary character.

(52) In addition to the above there is the method of admission to the service provided by section 21 of the Act of 1908, which may or may not involve an examination of a more or less special character.

(54) So far as I am able to judge, this method of recruiting the service by competitive examination has given general satisfaction and

has succeeded in attracting a better class of candidate than the system which it replaced.

(55) The selection of persons for appointments in the public service, and especially in the Second Division, is a peculiarly difficult task because, if the service is to be regarded as a permanent career to which a man is to devote his active life, it becomes necessary to form a judgement not only on his capacity for the work which will fall to him immediately on appointment, but on his capacity some twenty or thirty years later for the higher duties which he may then be required to perform.

(56) No conceivable method of selection can be relied upon to penetrate so far into the future. We must, therefore, be content with such a measure of merit as is evinced by success in a competitive examination in subjects which indicate a previous education of a high standard; and we must assume that the raw material so selected will, with suitable training in the department, develop the required capacity for the more advanced duties. The system of selection by open competition undoubtedly leaves much to be desired; but in this imperfect world it is not the least perfect institution; at any rate nothing better has yet, in my opinion, been suggested.

(57) For reasons given later¹ on in this report, I think it is of great importance to maintain an examination of a much higher standard for admission to the Second Division than is necessary for the Third. There may be isolated cases of men who, having entered the Third Division, afterwards show ability which might be usefully applied to the more responsible duties; but these will always be rare, and I think it is scarcely worth while to provide for them at the risk of introducing a lower standard of education into the higher ranks of the service.

(58) While the method of appointment to the Inside Service is on the whole satisfactory, it is a question whether it is attracting as good a class of recruits as it should, and must, if the business of the country is to be carried on in an efficient manner.

(59) For this purpose it is necessary to attract the best brains and capacity into the service, and to induce young men to look on it as an honourable career in which they may spend their lives.

(60) One of the main drawbacks to which it is subject from this point of view is the uncertainty of the prizes attainable. A man of ability will not be induced to enter the service or to put forth his best powers in it, unless he feels that merit is certain of its due reward. Care in the selection of candidates for first appointments is, therefore, not the only requisite; a man must be encouraged to feel that throughout his whole career his advancement depends on his own ability and industry, and that, given the proper measure of these qualities, success is assured to him. So long as promotion does not depend on these

¹ Paragraphs 100-1.

qualities alone, but is liable to be affected by other considerations, the civil service will never be in a position to cope effectively with the growing business of the country.

(61) Confining myself for the moment to the Inside Service alone, I have the following suggestions to make:

(a) The limits of age for appointment are too wide. If a man is to be properly trained in the civil service, he should enter it as soon as possible after he has completed his education. Under present conditions the maximum limit of age is 35. Men who come in after 25 have probably attempted some other occupation and failed in it; and there is, moreover, great inconvenience in having officials of 30 and upwards working side by side with younger men and performing duties of an elementary character. For Subdivision B of the Second Division, the limits of age should be 18 and 25. For Subdivision B of the Third Division, it might be desirable to take in youths even below the age of 18. Probably 17 and 21 would be more appropriate limits for candidates for this Division than 18 and 35. For the lower grades age is of less importance than physical vigour; but I think that 45 should be the limit not only for sorters, porters, and packers, but for messengers also.

(b) In the case of both Subdivisions, the vacancies known to exist should be notified at the time when the examination is announced, and the vacant appointments should be offered to the successful candidates in order of merit. The departments would, of course, have the right to reject any candidate after probation; but all successful candidates ought to be assured of an appointment, and so far as is practicable, they ought to be allowed, in order of merit, to select the department in which they will serve.

(c) The powers conferred by section 21 of the Act of 1908 are, in my opinion, too wide, and tend to encourage a departure from the general principle of selection for merit alone, as it is always possible to contend that any particular position, even if not 'wholly or in part professional or technical', is 'otherwise peculiar'. I suggest that the powers under this section should be limited to professional or technical positions; and that a schedule of the situations which may be filled in this way should be prepared and approved by the Governor in Council. . . .

I think it is also desirable that appointments under section 21 should be left entirely to the Civil Service Commissioners, unless they report that they are unable to find suitable candidates.

(d) A distinction should be drawn between those branches of the service which are of a clerical or administrative character, and those in which technical or professional knowledge is required; and special schemes of examination should be drawn up for the latter, when required.

(e) Provision should be made in the junior grades corresponding to

the Third Division for a class of skilled artisans and technical assistants, such as laboratory assistants, electricians, draughtsmen, and others, who require technical skill though not qualified by scientific or professional training for the higher positions.

(78) . . . If the system of examination and certificate (whether after competitive or merely qualifying examination) is desirable for the Inside Service, it is difficult to understand why it should not be regarded as equally desirable for the Outside Service. I can see no reason why the junior ranks in the Excise and Customs Service, for example, should not be subjected to the same conditions, *mutatis mutandis*, as the junior ranks in the clerical departments of the Inside Service. The Outside Service is, speaking generally, of no less importance than the Inside Service. An efficient staff is no less necessary; and it should be recruited under similar conditions.

(79) For the same reason promotion in it should follow on the same lines; by which I mean that the prizes of the service should be reserved for those who have shown themselves capable of performing the highest duties. At present such positions as Postmasterships and Collectorships are filled by the appointment of persons who, whatever their other merits, have not had the advantage of long training in the service, and are consequently compelled to rely on their subordinates in transacting the business of their departments. Such a system is fatal to an efficient service in two ways: the higher positions are filled, not by experts, but by amateurs; and the best type of official is not attracted into the service because he recognizes that its prizes are not within his reach.

(80) By section 4 (3) of the Act of 1908, power is given to the Governor in Council to bring the whole or any part of the Outside Service under the same provisions of the law as the Inside Service. I strongly recommend that this power should be exercised forthwith, at least as regards the Post Office, Customs, and Inland Revenue Departments; and further, that each of these services should be graded in such a way as to provide a ladder of promotion from the lowest ranks to the highest.

(b) THE MANNER IN WHICH PROMOTIONS ARE MADE

(81) As the law now stands promotion from the Third Division to the Second Division can only be made through the open competitive examination described above, except in the case of officers who were already in the Third Division on the 1st of September, 1908, for whom special provision has been made.

Promotion in the First and Second Divisions is made by the Governor in Council upon the recommendation of the Head of the department, based on the report in writing of the Deputy Head, and with a certificate of qualification from the Civil Service Commissioners

to be given either with or without examination as may be determined by them.

(82) *Prima facie* it appears to me undesirable that the Commission should intervene in questions of promotion. The duty of selecting suitable persons for first appointments in the service is one which they are well fitted to perform. The duty of adjudicating on the merits of officers whom it is proposed to promote from one grade to another is an entirely different one.

(83) Except in rare cases the method of examination seems to me unsuitable for such a purpose as promotion. The claims of an officer to promotion rest partly on the manner in which he has hitherto performed his duties, and partly on the judgement which can be formed of his capacity for the higher duties which will fall to him after promotion. On both these points the opinion of those under whom he has worked must be of far greater value than that of an outside body of commissioners who can have no personal experience of him or of his work. I cannot but think, too, that the intervention of the Commissioners in this matter must tend to weaken their position in the discharge of the more important duties imposed on them in regard to first appointments.

(84) If the recommendations of the Head of the department and of the Deputy Head were honestly made under a proper sense of the responsibility imposed on them (and for the present purpose no other assumption is possible) I should feel some confidence that the right man was selected; and I should, therefore, be disposed to dispense with the certificate of the Civil Service Commissioners.

(85) On the other hand, I must say that cases have come under my notice which lead me to think that in some instances the recommendations of both the Heads and the Deputy Heads of departments have not been founded exclusively on 'merit' as the Act directs, but that other considerations, or perhaps I should say 'merits' other than those contemplated by the Act, have been allowed to carry weight, and that grave injustice has sometimes been done to deserving officers who have in consequence been passed over. I should hope, however, that promotions of this kind are becoming fewer, as a sense of the responsibility for the selection of the fittest candidate becomes more real. Not only does the public service suffer if the fittest man is not promoted, but grave injustice is inflicted on the individual who is passed over merely because he is unable to bring political or other influence to bear in his favour.

(86) On the whole, whilst I do not feel entitled to express a very decided opinion on the subject, I should be inclined to repeal those provisions of the Act which require a certificate from the Civil Service Commissioners for promotions, and leave the matter in the hands either of the Head of the department and his Deputy, or of the Appointment and Promotion Board above suggested.

(c) THE MANNER IN WHICH RETIREMENTS ARE EFFECTED

(87) All persons in the civil service, with very few exceptions, hold office during pleasure—that is to say, their services can be dispensed with at any time. But I cannot find that there is in actual operation any rule or practice making retirement compulsory at any given age; and except in rare cases little or no pressure seems to be brought to bear on officers to induce them to retire, so long as they are able to continue in attendance at their department. In the absence of ill health or misconduct, or some special ground for pressure on the individual, it seems to be left to the discretion of the officer himself to select the moment for his retirement. . . .

(89) This state of things, in my judgement, constitutes a very grave evil. Some system of securing retirement is absolutely essential if the public service is to be maintained in a satisfactory condition. It is necessary, on the one hand, in order to prevent officers from continuing in the service after they have ceased to be efficient; and it is equally necessary in order to provide a flow of promotion and to ensure that men of capacity should reach the higher positions at a period of life when they are able to make the best use of their powers.

(90) But a system of pensions is an essential element in any system of retirement. For it will be found that Heads of departments will not discharge men who have given long and faithful service to the State—or even men who have not—unless some definite provision is made for their support when they have ceased to draw salary; and it is probable that public opinion would generally endorse this view.

(91) The pension system also has advantages of another kind. Owing to the nature of the work carried on in the public service it is highly desirable that men should be encouraged to enter it early and remain in it as long as their powers are unimpaired—in short to make their career in it. A pension, which will be available when they break down through ill health, or when their term of service comes to an end, will be a powerful attraction to young men just entering a career, and will appeal even more directly to civil servants who have reached middle life and are tempted by offers of outside employment.

(92) The absence of a pension system, therefore, operates against the public interest in two ways;—men whose services might well be dispensed with are retained after their powers have begun to fail; and men whom the State would be glad to retain are allowed to be tempted out of the service at a time when their value is highest.

(93) I would therefore strongly urge as one of the most important items of civil service reform that some system of pensions such as that which was rescinded in 1898 should be re-established.

(94) But if the pension system is to be restored, it should be accompanied by a provision requiring compulsory retirement at a certain age. I suggest that at or after the age of sixty retirement should be at the option either of the officer himself or his department; that at the age of sixty-five he should be compelled to retire; and that no relaxation of this rule should be permitted except for the single purpose of allowing him to continue in the service for a few months (not more than twelve) in order to complete a definite piece of work for which his services were specially required.

(95) The advantage of a rigid rule of this kind is that it relieves the Heads of departments of the unpleasant and invidious task of representing to an official, who may perhaps be of long standing, that his powers have begun to fail and that his place can be better filled by a younger man. There will, of course, be cases of men who at the age of sixty-five will still be fully efficient, and whom it might be desirable to retain in the service; but these will be far out-numbered by the cases in which an officer ought in the public interest to retire, and will, under this rule, be compelled to do so without feeling that he has been harshly treated, or that any reflection has been cast upon his capacity. He will recognize that he is only conforming to a regulation which strikes at the efficient and inefficient alike.

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(d) THE CLASSIFICATION OF THE STAFF AND THE DISTRIBUTION OF DUTIES IN EACH DEPARTMENT; AND THE DUPLICATION OF THE SAME OR SIMILAR WORK IN TWO OR MORE DEPARTMENTS

(97) The Inside Service as constituted under the provisions of the Civil Service Amendment Act, 1908, is arranged in three divisions: First, Second, and Third; each of these again comprises two sub-divisions known as A and B.

(98) A clear distinction is drawn by the Act between the duties of the Third Division on the one hand, and those of the Second and First Divisions, on the other. The duties of the former are described as copying and routine work under direct supervision, of less importance than those of the Second Division. The duties of the First and Second Divisions are technical, administrative, or executive.

(99) While the First Division is to be recruited by promotion from the Second Division (section 25) and the Second Division by open competitive examination, no other provision is made for transfer from the Third Division to the Second, except in the case of officers who were already in the Third Division at the time of the passing of the Act, for whom special arrangements are made in section 26 (2).

Moreover, the subjects prescribed for the Second Division examination indicate a standard of education similar to that provided by the Universities, while the subjects prescribed for the examination

admitting to the Third Division represent a much lower range of attainments.

(100) It is in my opinion of great importance that this distinction between the work of the two Divisions should be preserved. The essential difference between them is that the work of the two higher Divisions requires the exercise of discretion and the possession of altogether higher qualifications, whether professional, technical, or administrative, than that of the Third.

(101) For routine work, under direct supervision, all that is required is punctuality, accuracy, and precision. The copying of accounts, the compilation of statistics, the filling up of forms, and even the drafting of simple letters, are all matters in which there is no room for the exercise of discretion. The qualifications required for the work of the higher classes are essentially different from those required for the routine duties of the lower classes; and are not usually developed from them. There will always be a large number of persons who, while quite capable of routine work, will never be able to rise to duties of a higher character requiring a higher standard of education and the higher qualities required for successful administration.

(102) I fear that under present conditions sufficient attention has not been paid to this distinction. In many departments there are officers in both the First and Second Divisions performing duties which belong properly to the Third; and little, if any, attempt has been made to distribute the work in the two upper Divisions so as to correspond to the salaries assigned to them. Moreover, the distinction between the routine work of the Third Division and the superior work of the two higher Divisions seems to have been ignored.

(128) In the earlier portions of this Report I have indicated the important points which appear to require attention in connexion with the organization of the public service; such as the amount of routine business transacted by Ministers both in Council and in their departments; the necessity for a closer control over the expenditure; the practice of transacting business by oral discussion rather than by correspondence; the want of a proper classification of the duties and staff in the several departments; the appointment and promotion of officials on political grounds rather than on merit; and the establishment of a system of retirement.

But of all the topics on which I have touched the two which appear to me to be the most important are first, the relief of Ministers from routine and administrative duties so that they may be set free for the consideration of policy; and secondly, the improvement of the organization and personnel of the public service so that it may be in a position to cope efficiently with the business of the country, not only in the present, but in a future which is day by day developing additional work and fresh responsibilities. . . .

III

REPORT OF TRANSMISSION, 1919

*Accompanying the Classification of the Civil Service of Canada
(Report, pp. 4-8, 36-44.)*

THE NEED AND PURPOSE OF CLASSIFICATION—A DISCUSSION
OF THE CONSIDERATIONS THAT MADE THE CLASSIFICATION OF
THE CIVIL SERVICE IMPERATIVE

There were several reasons why the classification of the civil service was necessary as a preliminary step to any adequate attempt to administer the Civil Service Act of 1918. These ranged all the way from the express provisions and implied requirements of the Act to the general dictates of good civil service practice. In the following paragraphs we explain some of the more direct and important of these reasons.

First: The Civil Service Act of 1918 specifically called for a classification of the 'Outside Service'. Section 52 (1) provides:

The Commission shall, as soon as practicable after the passing of this Act, . . . prepare schedules containing lists of the positions and the duties and salaries attached thereto and the salaries and increases or other remuneration that in the opinion of the Commission are necessary and proper, . . . and, upon the approval of the same by the Governor in Council, and by resolution passed by both Houses of Parliament, such schedules shall come into operation.

At least fifty thousand positions (about 85 per cent.) of the approximately sixty thousand coming under the Act are in the so-called 'Outside Service'. No investigation, analysis, or classification of this service that would give the Commission a basis to work on had ever been undertaken. It was clearly the intention of Parliament that these fifty thousand positions should be studied and classified as the first step in the application of the extended Civil Service Act. The classification submitted herewith constitutes such an analysis and complies in a practical way with the requirements that 'the positions and the duties and salaries attached thereto' be 'listed'.

Second: If the provisions of the Act with regard to the examination of applicants were to be carried out, a classification was absolutely necessary. The primary function of the Civil Service Commission is, of course, to recruit the service by selecting from among all persons available those who are best fitted to fulfill the duties of the respective positions to which they seek to be appointed. The first clause under the side-heading, 'Duties of Commission', Section 4 (1) (a), reads:

To test and pass upon the qualifications of candidates for admission to and transfer and promotion in the civil service, . . .

Obviously the Commission cannot pass on the qualifications of candidates to fulfill the duties of particular positions unless they know what the duties of those positions are. If they are to wait until a vacancy is to be filled to ascertain the duties not only will a serious delay be introduced but a separate test of applicants will have to be conducted for each vacancy, which is an absolutely impracticable method. Only by a system of classification by which positions having substantially the same duties and calling for the same qualifications are grouped together can examinations be held in advance and lists of qualified persons (eligible lists) be secured and maintained. Then when vacancies occur, appointments can be made without delay from those whose names are on the appropriate list and examinations need be held only when lists need to be replenished.

Third: The provisions of the Act respecting the organization of departments also impliedly called for a classification of positions. Section 9, part II, of the Act requires the Commission, after consultation with department heads, to prepare plans for the organization of each department of the civil service, and particularly provides in clause 4, page 5:

If, after such organization and classification has been effected, the number of officers, clerks, and employees in any portion of the civil service, or in any class or grade thereof, is greater than the number allowed under such organization, the remainder shall be supernumeraries. . . .

Clearly if the Commission is to indicate what classes of positions and what numbers of each class are required for the work of any department, it must be able to refer to a classification and scheme of nomenclature by which the duties of given classes are prescribed and designated.

As an example, let us assume that the Commission has analysed the work of a certain branch and found it to be partly statistical, partly engineering, partly legal, and partly clerical. It is not in a position to specify the positions to be allowed for the handling of such work if it has no classification to refer to in preparing the budget of positions. With the classification at hand it could say that the branch should comprise, say, 1 Chief Clerk, 1 Principal Clerk, 14 Junior Clerks, 3 Junior Statistical Clerks, 1 Junior Departmental Librarian, 1 Messenger-Clerk, 2 Statistical Clerks, 2 Clerk-Stenographers, 1 Clerk-Typist, 1 Junior Law Clerk, 2 Draftsmen, and 1 Mechanical Engineer. Each of these designations would have a meaning uniformly accepted throughout the service by all departments and each class of position thus designated would carry a recognized scale of compensation and call for certain well understood qualifications.

Fourth: A classification was absolutely necessary if uniformity in compensation for the same work was to be brought about. In the

discussions in part II of this report the need for a standardization of salaries is brought out. That rates of compensation should be uniform for the same character of employment is, we believe, generally conceded, and if this conclusion is accepted, it follows that there must be some classification of kinds of employment in order to bring together those deserving of the same pay.

Fifth: Practically all of the remaining considerations making a classification of the service essential from the view-point of civil service administration are embraced in the one requirement that there must be an accepted uniform nomenclature for the designation of the positions that make up the service. . . .

A THEORETICAL ANALYSIS OF THE PROBLEM OF PERSONNEL

We will first attempt to analyse the problem in its theoretical aspects as a basis for the determination of the practical step necessary to its solution.

It is desired to provide the organization, and to keep it provided, with a personnel that possesses the skill and that will put forth the effort necessary to handle the work under a predetermined organization. This task obviously has two parts, 'securing the skill' and 'securing the effort'. Skill is used in the broad meaning of proficiency in either mental or manual pursuits.

The ideal solution of the first of these tasks would be the 'economical' acquisition of the 'maximum' skill. Three distinct requirements are involved. The idea of economy implies the relation between the remuneration to be paid and the degree of skill required, and this presents the first specific problem, namely, the determination of the right compensation for the positions to be filled. That is the first problem.

The skill at the disposal of the organization is made up of the skill possessed by recruits at the time of their appointment, plus the subsequent development for which experience and training in the service are responsible. The second and third requirements are, therefore, (1) the selection of persons best qualified to perform the duties of the position to which they seek to be appointed, and (2) the subsequent training of such employees while in the service to the end that they may become progressively better fitted.

Those employment problems that relate to the securing of effort are more complex; they involve the systematic promotion of the personal endeavour of the members of the organization to the end that they will industriously and effectively apply their skill. The agencies available for the promotion of the efforts of employees are numerous, and an enumeration of these agencies will serve as a basis for the analysis of this phase of the employment problem. All methods will fall under one of two general heads, the 'supplying of incentive' or the 'removal of resistance'.

Incentive supplied by the management may take the form of a reward or a punishment; the initiative of the employee himself is the result of a combination of unselfish motives best covered by the word 'loyalty'. Any advantage accruing to the employee as a direct or indirect result of his application to duty is a reward, and the incentive supplied by assured reward for demonstrated merit is undoubtedly the most efficacious. The simplest form that such reward may take is sure tenure of employment and assured participation in the privileges of employment. The second form is advance in pay, and the third is promotion in rank. Promotion should be the most desirable form, because it carries with it not only increase in compensation but opportunity for future greater increase.

Hope of reward is a positive incentive; fear of punishment is a negative one. The latter can of course be supplied by depriving the employee to be disciplined of the opportunity for a positive reward. The most drastic and most effective form of punishment is permanent removal from the service, the next is a temporary removal in the form of suspension, and the least effective is the entry of a demerit or a charge against the efficiency record of the employee that will tend to decrease the likelihood of his receiving higher pay or promotion to a higher rank.

The incentives that originate with the employee, which may be collectively referred to as loyalty, can be strengthened only in indirect ways: by leadership, inciting the employee's desire to emulate a good example; by justice and fair play, encouraging the employee to give an honest return for honest treatment; by the introduction of competition between employees, keeping up a spirit of enthusiasm that will naturally be contagious; and by similar psychological influences.

Hope of reward, fear of punishment, and loyalty are all incentives to greater effort on the part of the individual in applying himself to his task. The amount of effort applied directly on the task in hand may also be increased, however, by reducing the resistance that stands in the way of its application. The measures that are employed to this end in modern schools of management are ordinarily referred to as 'welfare work'. These measures have to do with the improvement of the environment and influences, both physical and mental, that affect the working conditions of employees. Those things that affect physical well-being include working space, light, temperature, ventilation, noise, conveniences, bodily safety, transportation facilities, opportunity to get good food, and so forth. Those things that affect the employee's state of mind must also be considered. They include the relation between working time and playing time; opportunities for recreation and for mental improvement; and relief from fear of unemployment, of sickness, of the disability of old age, and of the effects of death on dependent survivors.

A STATEMENT OF THE ESSENTIAL FEATURES OF A COMPLETE EMPLOYMENT
PLAN FOR THE CIVIL SERVICE OF CANADA

The above theoretical analysis of the employment problem, as it exists in any large organization, will serve to indicate the things that a complete employment plan must undertake to accomplish. We recommend that the Civil Service Commission proceed to apply such a programme of employment administration to the Civil Service of Canada.

Before outlining the steps in such a programme we wish again to point out the essential difference between questions of organization and questions of personnel. In the following outline we will assume that the methods of doing business, and the structure and the size of the organization of departments, have been decided upon and are considered satisfactory, and that only the purely employment functions are to be considered.

The essentials of the employment plan we recommend are as follows:

1. The classification of the service.
2. The standardization of the rates of compensation (pay and working hours) for all classes of positions.
3. The adoption of practical and scientific methods of selection. Comments on the methods now in vogue and recommendations for improvement are discussed in the next section of this report.
4. The installation of a system to train recruits in the specific duties of their particular positions and in the general work of their department. This subject will also be discussed in a separate section in its turn.
5. The adoption of a basis for measuring and a system for keeping, or at least controlling the keeping, of individual efficiency records of employees.

Under the theoretical analysis in the preceding section, the employment processes coming after selection and training have to do with the supplying of incentive and the lending of assistance to employees to enable them to use their skill and knowledge effectively in the performance of their respective duties. Obviously, as a basis for any system of encouragement, reward, or censure, there must be a knowledge of the facts regarding quantity and quality of the service rendered—that is, of the individual efficiency of employees.

6. The enforcement of a policy of advancing the pay of employees (within the limits set for their positions) on a basis of increased proficiency and usefulness.

7. The enforcement of a policy of filling higher places in the service by the promotion of the best qualified employees in the lower classes in the service as determined by open competition with due credit for length of service and demonstrated efficiency. It should be provided,

however, that if there be no one in the service who can meet the requirements of the higher place, new blood will be introduced by throwing the competition open to the public.

8. The introduction of a system for the sure and prompt removal from the service (after fair hearings) of employees who do not maintain the prescribed standards of efficiency.

9. The inauguration of a plan for the retirement on annuity allowance of employees who have become incapacitated (either through the length of their service or through disability acquired in the course of their service) and who can, for such reason, no longer maintain a satisfactory standard of efficiency.

10. The enforcement of a policy of lay off of employees in positions that are found to be unnecessary to the conduct of the public business, or that can be temporarily left vacant without material hindrance to the conduct of public business: also the adoption of a ruling that lay off shall be without loss of rights to reinstatement by appointment to the next vacancy in a position of the class from which laid off; provided that the employees were in good standing when laid off and had been regularly appointed.

11. The establishment and maintenance of 'working conditions' that will make for the attainment of the maximum individual efficiency.

12. The establishment of a means for co-operation between civil service employees and the Government as their employer.

THE SCIENTIFIC SELECTION OF EMPLOYEES FOR ORIGINAL AND PROMOTIONAL APPOINTMENTS

In any plan for the scientific selection of employees it is essential that the duties of the positions to be filled and the qualifications required of applicants be known, that there be a qualified selecting agency, that there be a field of applicants to draw from, that there be a method of determining the relative fitness of applicants. Theoretically there is little difference in the essential requirements of a system for the selecting of an employee for entrance into the service and of a system for the selection of an employee for promotion in the service. Practically, too, the difference is comparatively slight.

The selecting agency set up by law for the Dominion Civil Service, is, of course, the Civil Service Commission and, more particularly, the Examination Branch of the Commission. The classification, showing as it does the duties of the various classes of positions and the qualifications required of applicants, provides the selecting agency with sufficient information on which to base its examinations.

The size of the field of applicants from which the selection is to be made is largely within the control of the Commission. The field may be as wide as the Dominion, as in the case of clerks to be employed at Ottawa, or it may be limited to a very small group, indeed, as in the case of a promotional examination with competition limited to

employees in a particular class when one of the higher supervisory positions is to be filled. In any case the field must be restricted to those who have actually filed applications, but this field may be enlarged to almost any extent desired through proper advertising and other publicity. If selections are to be made only at the time vacancies occur it will not, as a rule, be possible to secure a large number of applicants. If, however, selections are made at intervals in anticipation of vacancies, and if proper notice of examinations is given, a larger class of applicants can be secured. The proper practice undoubtedly is to maintain live lists of eligibles for those classes of positions in which vacancies are of frequent occurrence, and to hold examinations only at the time vacancies occur in the case of classes including one or only a few positions.

Probably the most important element in the problem of selecting employees is the method used to determine the relative fitness of the applicants. The process through which the fitness is determined is called the examination. While the examinations for entrance to the service and promotion in the service may differ somewhat, they both should take into account the following considerations as determining the relative fitness of applicants:

1. Character, as shown by the applicant's record and references.
2. Education and experience, as shown by the applicant's statements, verified by investigation if necessary.
3. Ability to perform the duties of the position, as shown by a test. This test may take one or more of the following forms to bring out the following types of qualifications:
 - (a) Knowledge of the duties of the position sought, ability to perform them, and to some extent, judgement, discretion, and organizing ability as shown by written tests.
 - (b) Proficiency as shown by a test in which the applicant actually performs one or more of the kinds of work required of an incumbent of the position.
 - (c) Physical condition, strength, and agility, as shown by a medical or physical examination.
 - (d) Personality, manner, mental characteristics, and other qualities, as determined by a personal interview.
 - (e) In some cases, education, as shown by academic tests.

In very few cases will all of these different tests be applied. In no case should an applicant for a position be allowed to enter the Dominion Civil Service without sufficient investigation of his past record to determine that he has such qualities as honesty, sobriety, and morality, as otherwise he might bring discredit upon the service. Minimum educational requirements for each class are specified in the classification, making academic tests ordinarily unnecessary. The 'qualifications' likewise set forth the minimum experience required of applicants. Ordinarily, the applicant's own statement as

to his education and experience will suffice. In the lower ranks the applicant's knowledge of the method of performing the duties of the position sought should ordinarily be determined by a written test. For some positions, notably the trades, the practical test will be found more satisfactory. The prospective plumber, for instance, may be supplied with appropriate tools and equipment and asked, in the presence of the examiner, to 'wipe a joint', and the prospective carpenter given a plane, saw, square, and pencil, and told to make, under the examiner's eyes, a riser for a stairway. The stenographer may be given dictation of ordinary business letters or other matter, and asked to transcribe the notes on the typewriter. For the higher positions, more frequently the examination will consist of a statement of education and experience prepared by applicants in their own homes, supplemented by an oral interview with those who show in their applications that they have the minimum qualifications required; in some cases a thesis on an assigned technical subject may also be required. The record in the service of those seeking promotion, as well as the length of service, should, of course, be given considerable weight.

As far as our knowledge of present conditions goes, the existing situation with regard to the four essentials of a scientific system for selecting employees is as follows:

1. The selecting agency, the Civil Service Commission, has considerable information as to the duties and qualifications required of incumbents of positions in the Inside Service, but has been forced to rely on the statements of departments as to the duties and qualifications of the incumbents of positions in the much larger Outside Service. The classification submitted herewith will in a large measure remedy this shortcoming.

2. The field to choose from has been much limited. Frequent complaint is made that people living in and near Ottawa almost entirely monopolize the positions in the Inside Service, and that those at a distance know nothing about vacancies until after appointments have been made. Even more than has been done is necessary to acquaint the people of Canada with the opportunities for entry into the civil service. The *Canada Gazette*, in which all announcements are printed, although widely distributed has of course a numerically limited circulation. But much has been done through paid advertising, through news letters, and through other avenues of free publicity. With regard to promotional examinations, the field has been, as a rule, extremely limited, as the custom has been for the department to recommend some person and for the Commission to give its approval. In some cases undoubtedly the departmental officials have thoroughly canvassed the situation and recommended the person best fitted for promotion, though it would be idle to claim that this is the rule rather than the exception. Investigations made in the course of the classification have led to the

conclusion that employees generally have the feeling that promotions are made through favour as often as for merit.

3. The old examination plan has been found inadequate since the passage of the Civil Service Act of 1918 brought the Outside Service under the Commission's jurisdiction. When selections were made for the Inside Service only, consisting in the main of clerical employees, academic tests met with some degree of success, though very frequently eligibles who had taken the general tests found upon appointment that they lacked some essential qualification such as proficiency in mathematical computations, ability to operate a typewriter, knowledge of filing systems, ability to handle correspondence, or knowledge of modern office practice. The purely academic tests never have met with a satisfactory degree of success in choosing employees for other than clerical positions. In fact, about the only honest opposition to the civil service system arises out of a fear that an attempt will be made to select railway mail clerks, watchmen, charwomen, engineers, customs examiners, draftsmen, and other non-clerical employees through the propounding of such queries as 'What is the longest river in Canada?' or 'Who was the first man to cross the Rocky Mountains?' On the other hand, the modern system of practical tests in use by many municipalities and States for years has been a pronounced success and is peculiarly suited to a miscellaneous service such as the civil service of Canada.

We submit the following recommendations with regard to the selection of employees for original and promotional appointment:

1. That live lists of eligibles be continuously maintained for all classes in which frequent appointments are made, and that eligible lists for other classes be established only as need arises.

2. That the examinations to establish eligible lists be based upon the duties and qualifications of the various classes, as set forth in the classification, and that in the main the present system of academic tests be discarded. In each case the examination should determine by the most direct and practical method whether applicants possess the required qualifications and are able to perform the duties, and if so, their relative fitness.

3. That a separate examination be held as need arises for each class defined in the classification, and that the present system of 'preliminary' and 'qualifying' examinations be abandoned.

4. That for promotions in the service, competition in the main be limited to those in lower ranks whose experience fits them to perform the duties of the higher positions, and that the subjects of the promotional examinations be demonstrated efficiency, seniority (length of service), and questions on the duties of the higher position.

5. That when the higher-paid positions are not filled through promotions, the examination consist of statements of education and experience (career), verified in whole or in part by the Commission's

investigators, supplemented by an oral interview, and in some cases a technical paper on an assigned subject.

6. That in all cases where the education and experience of the applicant is a part of the examination, standards be established in advance for rating education and experience.

7. That in all examinations where a written test on the duties of the position or academic subjects is given, standards be established for rating the answers of applicants.

8. That in all examinations, regardless of the number of appointments to be made, every applicant receive a mark in each subject on the basis of 100 for perfection, that the various subjects be weighed, that a general average be determined for each applicant, and that the eligible list consist of the names of all applicants whose general average and whose mark on each subject exceeds the required minimum.

9. That the Commission add to its permanent staff under a thoroughly qualified chief with broad knowledge of modern examination methods and with a high degree of organizing ability, a sufficient number of examiners to conduct with the aid of special examiners appointed from time to time, the tests necessary to maintain at all times the required eligible lists.

10. That additional temporary examiners be provided until the work of establishing initial eligible lists is well under way.

11. That the Commission make wide use of special examining boards composed of men of eminence in various lines to aid in the selection of employees for the administrative and the higher supervisory positions, and also for positions whose incumbents are required to possess highly specialized knowledge and skill. . . .

IV

REPORT OF THE ROYAL COMMISSION ON TECHNICAL AND PROFESSIONAL SERVICES, 1930

(*Report*, pp. 13-34.)

II. THE GOVERNMENT SERVICE COMPARED WITH PRIVATE EMPLOYMENT

In certain respects, it is true, the civil servant is at no disadvantage, or even at a positive advantage, when compared with other workers of his own kind in private employment. An appointment in the service carries with it security of tenure. The holder of such an appointment is freed from many of the uncertainties to which the servant of a private corporation is exposed. In the case of the civil service of Canada, we find that the system of pensions and superannuation is adequate, and indeed generous, in its treatment of those with ten or more years of service to their credit. Provision for holidays and sick leave is adequate also. It is superior to that ordinarily found in private employment, and equal to the best current practice.

These three conditions serve, very properly, to assist in relieving the civil servant of anxieties with regard to his own future and that of his dependants; and so set him free, without such distractions, to concentrate upon his duties. But while they do constitute advantages, when compared with the conditions ordinarily prevailing in private employment, such advantages are not those which as a rule appeal most strongly to men of an energetic, creative temperament, among whom the leaders in the service, no less than the directing heads of private enterprises, must be sought. For the sake of the country, no less than of the service itself, it is necessary that conditions of employment should offer a permanent positive attraction to men of this type.

The disadvantages encountered in the service are connected, for the most part, with the scale of salaries, and with the opportunities for promotion.

Salaries within the Service, and in Outside Employment.

(a) So far as the scale of salaries is concerned, we find that the technical, scientific, and professional workers in the junior ranks of the service are at no pronounced disadvantage as compared with other similar workers in outside employment. Indeed, it is evident that beginners' salaries in the service are not infrequently somewhat larger than beginners' salaries elsewhere. The necessity for offering relatively high salaries to beginners is to be found in the very limited range of advancement which is open in the service, compared with the wide, and indeed almost unlimited range of advancement, which is offered to men of the required experience and calibre in outside employment. It appears, in other words, that the relatively low salaries paid to the senior officers of the service, instead of being a means of keeping the burdens of the taxpayers to the minimum, have actually been a means of increasing those burdens, since the number of beginners who must be liberally compensated, on the present scale, is comparatively large, while the number of senior officers, whose remuneration is low in relation to their responsibilities, is comparatively small. . . .

Opportunities for Promotion with the Service and Outside.

(b) So far as opportunities for promotion are concerned, it is sufficient in this place to state that they are very much more limited than in private employment. In the service the number of responsible and relatively highly paid positions is confined within rather rigid limits. Moreover, the number of resignations during the last ten years has been investigated, and our study shows that it represents a comparatively small turnover of the working force. As a result, not infrequently, individuals have been obliged to wait for promotion till death or superannuation creates a vacancy.

This is the condition throughout the technical, scientific, and

professional service, and at every stage of promotion. We have been especially impressed, however, by the slow rate of advancement observable among officers with from eight to twenty years of seniority. Many of these officers, at a time of life when the financial responsibilities of a growing family are apt to be heavy, have not yet reached a scale of salary which can be regarded as adequate, even for a decent subsistence. If their professional competence is open to question, they should not have been retained in the service. If their professional competence is not open to question, then they should be provided with opportunities for advancement, which will at least enable them to pass on to their children the same educational advantages as they themselves have had. It should be possible, long before the twentieth year of service, to pick out all those whose promise is exceptional, and by promoting them from post to post, to give them a variety of experience that will qualify them, while still in the prime of life, for heavier responsibilities to come.

A private corporation, operated under totally different conditions from those essential to the civil service, possesses an elasticity which makes possible the more rapid recognition of outstanding ability. Thus, in private employment, opportunities for promotion are usually more frequent and better. We nevertheless believe that the system of promotion in the service is capable of some improvement; and our recommendations on this point will be found in the later pages of this report.

12. THE SIMPLIFICATION OF SALARY SCALES

We have studied in detail the present system of classification in the technical, scientific, and professional service, and are impressed by the fact that it is unnecessarily cumbrous. *The number of individual classifications is very great; and the technical, scientific, and professional workers are paid at present on no less than two hundred and three distinct and separate salary scales. Overlapping of salary scales, in successive positions on the ladder of promotion, is the rule rather than the exception.*

We regard it as essential to the more efficient administration of the service that a limited number of salary scales should be substituted for the present multiplicity; that overlapping of salary scales be eliminated; and that, for the future, the creation of new classes with special salary scales be discontinued absolutely.

We believe that the bulk of present and future appointments can be organized, to the great advantage of individual officers, in seven grades, each with its appropriate salary scale, so arranged that the maximum in each grade is below the minimum in the next higher grade; and that the difficulties inseparable from such a simplification can be met by the determination of a small number of Special Ratings.

13. PRESENT PRACTICE IN DEALING WITH PROMOTIONS

The practice of the Civil Service Commission of Canada, in respect of promotion, is as follows:

Upon the occurrence of a vacancy, the Deputy Minister advises the Civil Service Commission as to whether or not, in his opinion, the vacancy can be filled by promotion, sometimes in special cases accompanying this advice with a recommendation for the promotion of a designated employee. His recommendation may or may not be accepted by the Commission. If it is not accepted, it may be because the Civil Service Commission is under the impression that other members of the same branch or department are equally well, or better qualified; or it may be because the Commission is unable to satisfy itself that there is any one in the department concerned who is sufficiently well qualified to fill the vacant position.

In the former case the Commission invites applications and requests the deputy to rate the various officials in his department, who apply for the position; the rating being made on a percentage basis, twenty per cent. for length of service, thirty per cent. for performance in the candidate's present position, and fifty per cent. on account of his fitness for the position which is vacant.

In the latter case (or indeed, in the former case, if the system of rating gives no decisive result) the Commission may advertise for applications for the vacant position, either in other departments of the service, or from the general public, and may hold a competitive examination. The candidate securing the highest mark, is, as a rule, appointed.

We do not believe that this system is well calculated to secure the most suitable technical, scientific, and professional appointments. It has one distinctive merit; it gives no place, at least ostensibly, to purely personal considerations. On the other hand, it is mechanical and lifeless. For junior positions involving no responsibility, there is something to be said for a system of rating, or alternatively, for a written test. Except in the case of junior positions, we regard either arrangement as being in many cases an unsuitable method of selection.

British Experience regarding Examination of Professional Civil Servants.

In this connexion we quote from the Fourth Report of the British Royal Commission on the Civil Service (Cd. 7338, 1914), which contains some pertinent observations on this question. In discussing the problem of recruiting members for the technical, scientific, and professional civil service of Britain, the commissioners observed (Chapter VI. i.):

It is at a comparatively mature age that such men, as a rule, become desirable as public servants; and as a rule they begin their service to the

State several years later than those who are recruited for administrative and clerical duties.

Any attempt to select men of such standing by competitive examination would be generally impracticable; for not only is it true that after a certain age, which some would fix as early as twenty-seven and few later than thirty, a man ceases to be 'examinable', but also the qualities which are required in this section of the public service are generally not such as to be susceptible of evaluation by the examination method.

Such a test, however, even if it did not deter desirable candidates from coming forward, could not be applied in such a manner as to eliminate the least fit or select the most fit for the public service.

We think that for candidates for the professional Civil Service below the age of about twenty-seven recourse should be had wherever possible to competitive examination, but that it is essential that men who have passed the age of twenty-seven or thereabouts should be chosen on their record of achievement and on their personal qualities unless, in the opinion of the Civil Service Commissioners, a competitive examination is, in the circumstances of any particular case, desirable.

14. PROPOSED CREATION OF TWO DIVISIONS IN THE TECHNICAL, SCIENTIFIC, AND PROFESSIONAL SERVICE; AND RECOMMENDATION WITH RESPECT TO THE METHOD OF SELECTION FOR PROMOTION IN EACH DIVISION

The selection of men for advancement and promotion is the central problem in the conduct of any great organization. After making careful inquiries, we do not believe that the system at present followed, as outlined above, is calculated to make for the maximum of efficiency, at least in the case of the technical, scientific, and professional workers. We believe that the Deputies should be given a much greater freedom to recognize and reward individual ability or special competency.

It must be remembered that the staff of the technical, scientific, and professional service have fitted themselves for specialized duties by undergoing a specialized preliminary training; and that in many cases the nature of their duties is such that no one who is not intimately acquainted with the field of knowledge in which their work lies is competent to form a judgement, either as to the quality of their work in the past, or as to their capacity for doing more advanced and responsible work in the future.

It is only natural that the heads of divisions and branches in the technical, scientific, and professional service should have an acquaintance with these matters very much more intimate than any one else can possess; and that, by daily contact with these heads, the Deputy Ministers in administrative charge of the departments should be better informed in regard to them than any one else, who is not actually working in the specialized fields to which reference has been made.

Moreover, the senior officers in the technical, scientific, and

professional service are responsible in many cases for the control of heavy public expenditures, sometimes running into millions of dollars —expenditures which cannot easily be made subject to routine supervision, in order to secure that they shall be made to the best advantage. . . .

Under these conditions, the Deputy Ministers and the heads of branches concerned have the same kind of interest as the managers and other executives of the great private bodies with which they deal, in building up around themselves a body of able and responsible subordinates, who are capable of the most effective team work possible, since many responsibilities must inevitably be delegated by them to such subordinates.

In other branches of the technical, scientific, and professional service, while no very great expenditure of public moneys may be involved, inquiries of a scientific character, whether research or survey, are continuously in progress; and upon the efficiency with which these inquiries are conducted, depend a possible gain or loss of many millions of dollars, by producers in the leading Canadian industries. An example of this is the research now being conducted into the problem of rust in the wheat fields, which, with a relatively small outlay of public money, will determine the possibility of regularizing and increasing materially the yield of the grain areas, to the great benefit (if rust can be combated successfully within a reasonable time) of the whole population of Canada. In cases of this kind, efficient team work among those chiefly concerned is an absolute essential—no whit less necessary than in other fields where large expenditures are being made.

Practice of Private Corporations in Selecting for Promotion.

In considering the possible measures by which this ideal of efficient team work, so necessary in each of the foregoing instances, may be secured among the responsible officers, it is well to take account of the principles which have been evolved by the great private corporations in order to deal with the same problem. The practice of the great private corporation in respect of the selection and promotion of subordinate officers is fairly uniform, and can be very simply stated. While the ultimate authority for all appointments and promotions rests with the chief executive, upon whom lies the responsibility for the conduct of the whole enterprise, it is also true that each executive official, who is responsible for a definite part of the work of the corporation, is allowed considerable freedom in selecting those who shall in turn carry responsibility under him. Although he possesses only the power to recommend promotions, and in every case such recommendation requires the sanction of higher authority, the system of consultation, as a result of which these decisions are made, generally gives him an effective choice as to who shall be associated with him

in the performance of his duties. Habitual interference with his freedom of selection would imply lack of confidence in himself, on the part of the chief executive, and might also be made to serve as an explanation of his subsequent failure to discharge his own responsibilities effectively. With subordinates who have not commanded his own confidence, but have been imposed upon him by superior authority, he may claim, with some show of reason, that he could not efficiently perform his task. Serious limitation of his freedom in this regard would, in other words, involve limitation of responsibility also; and the possible success of the business depends upon there being a clear allocation of responsibility.

Changes Desirable in the Service.

While we recognize that it is impossible to secure within the service the same degree of elasticity that is to be found in private employment, we have no doubt that changes can be made in the direction of greater elasticity. The three main essentials appear to be:

- (1) That the deputy should exercise a more direct control over his own staff than he possesses at the present time;
- (2) That in the selection of individuals for promotion, consideration should be given exclusively to merit; and
- (3) That decisions should be made and acted upon with the minimum of delay—a good deal more promptly than is sometimes the case at present.

Proposed Establishment of Two Divisions.

As will presently be seen, we recommend that the seven grades to be indicated below, which we propose as a substitute for the multiplicity of existing salary scales in the technical, scientific, and professional service, be divided into two Divisions, of which the lower be described as the First Division, and the upper be described as the Second Division. We recommend also that the control of promotion and advancement should be somewhat different in the respective Divisions.

Promotion in the First Division.

In the First Division, we believe that the best interests of the service demand an unfettered control of his subordinates by the Deputy, by whom advancement and promotion should be determined, subject to approval by the Treasury Board.

In this Division, the advancement of the individual should be dependent, not upon the creation of vacancies, but upon his own industry and ability, and the character of the work done.

This is in accord with the British tradition, and we believe that the high reputation of the British service is traceable in no small measure to the disciplinary control of subordinates within the department.

THE CIVIL SERVICE

Under the present proposal, the principal distinction of rank in the technical, scientific, and professional service will be that between the two Divisions. Officers will be raised from the First to the Second Division, as vacancies occur, only when they have already shown their fitness for individual responsibility, and have received a training for work in the Second Division.

Promotion in the Second Division.

In the Second Division, which will include all heads of branches and Divisions in the technical, scientific, and professional service, as well as many senior positions involving the supervision of subordinates, we believe that the Civil Service Commission should exercise a discretionary supervision over promotions; and that this obligation may remain upon the Civil Service Commission, without detriment to the performance of its principal function, that of selecting the most fit among the candidates for admission to the service.

In this instance, we recommend that the selection of candidates for promotion should be made by the Deputy (who will, it is assumed, take steps to ascertain the judgement of his senior officers, with regard to the fitness of candidates for promotion); but that, as a further safeguard against errors, the Civil Service Commission should be required, before such a selection is accepted and the promotion made effective, to certify that the selected candidate is competent, and qualified to discharge the duties that will devolve upon him in his new post. The recommendation of the Deputy, together with the certificate of the Civil Service Commission, would then be submitted for the final approval of the Treasury Board.

In other words, the Civil Service Commission should not be required, as at present, to survey the field of choice for possible promotions, but only to satisfy itself with regard to the selected individual, that he is a fit candidate for promotion.

15. THE METHOD OF RECRUITING FOR THE TECHNICAL, SCIENTIFIC, AND PROFESSIONAL SERVICE*Suggested Changes in the Method of Recruiting.*

In addition to these recommendations with regard to promotion, we suggest certain changes in the method of recruiting the members of the technical, scientific, and professional service, which are not fundamental, but which will, we believe, produce a marked improvement in efficiency. . . .

It is suggested that the Civil Service Commission should recruit for the junior appointments in all branches of the technical, scientific, and professional service, as far as possible at the same time, in the spring of the year.

Recruits in the junior ranks naturally come from the undergraduate

or graduate schools of the Canadian universities. Ex-students of the universities are looking for employment in the spring, and as a rule become available in May and June. At other times of the year, owing to the fact that these graduates usually find employment very quickly, it is sometimes almost impossible to fill junior technical, scientific, and professional appointments, even though they may be financially attractive.

If, therefore, the Civil Service Commission were to pool its technical, scientific, and professional appointments for the year so far as possible, and advertise them simultaneously in March, there is no reason why these appointments should not attract many of the best of the graduates leaving the Canadian universities. . . .

16. PROPOSED NEW GRADES AND DETERMINATION OF INDIVIDUAL SALARIES WITHIN GRADES

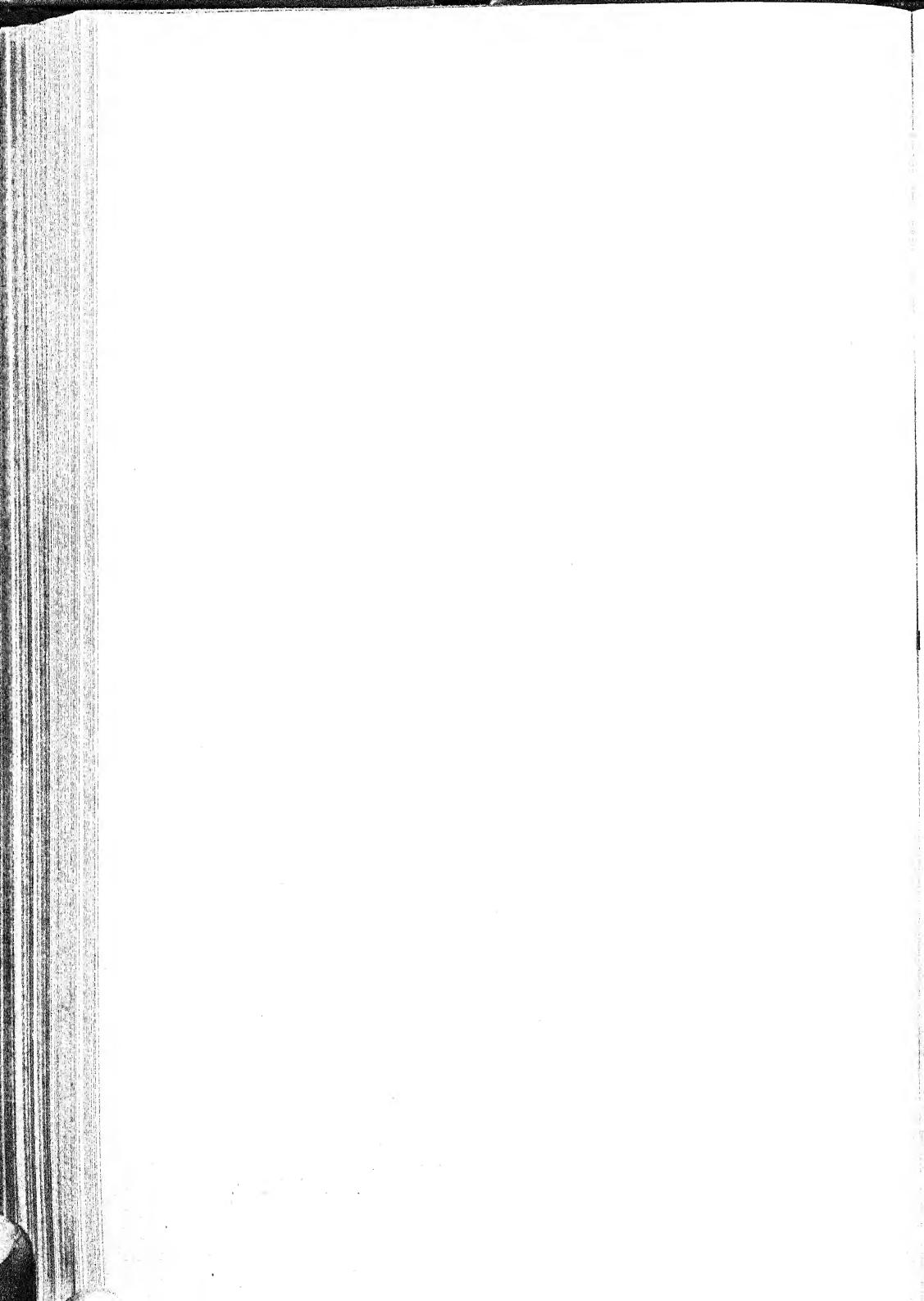
These recommendations, it is hoped, will lead to the recruiting of men of a high type for the technical, scientific, and professional service, and their advancement in the service, with a saving of effort and time to those in administrative charge, and increased satisfaction in their work and conditions of work, on the part of the members themselves. The framework of grades and salaries within which it is proposed to apply these principles, and which has already been described above in general terms, is as follows:

	<i>Minimum Salary</i>	<i>Annual Increase</i>	<i>Maximum Salary</i>
<i>First Division:</i>	\$	\$	\$
Grade I . . .	1,800	120	2,160
Grade II . . .	2,280	120	2,760
Grade III . . .	2,880	120	3,360
<i>Second Division:</i>			
Grade IV . . .	3,420	120	3,900
Grade V . . .	4,020	120	4,620
Grade VI . . .	4,800	240	5,520
Grade VII . . .	5,700	300	7,200
Special Ratings . . .		\$7,500—upwards	

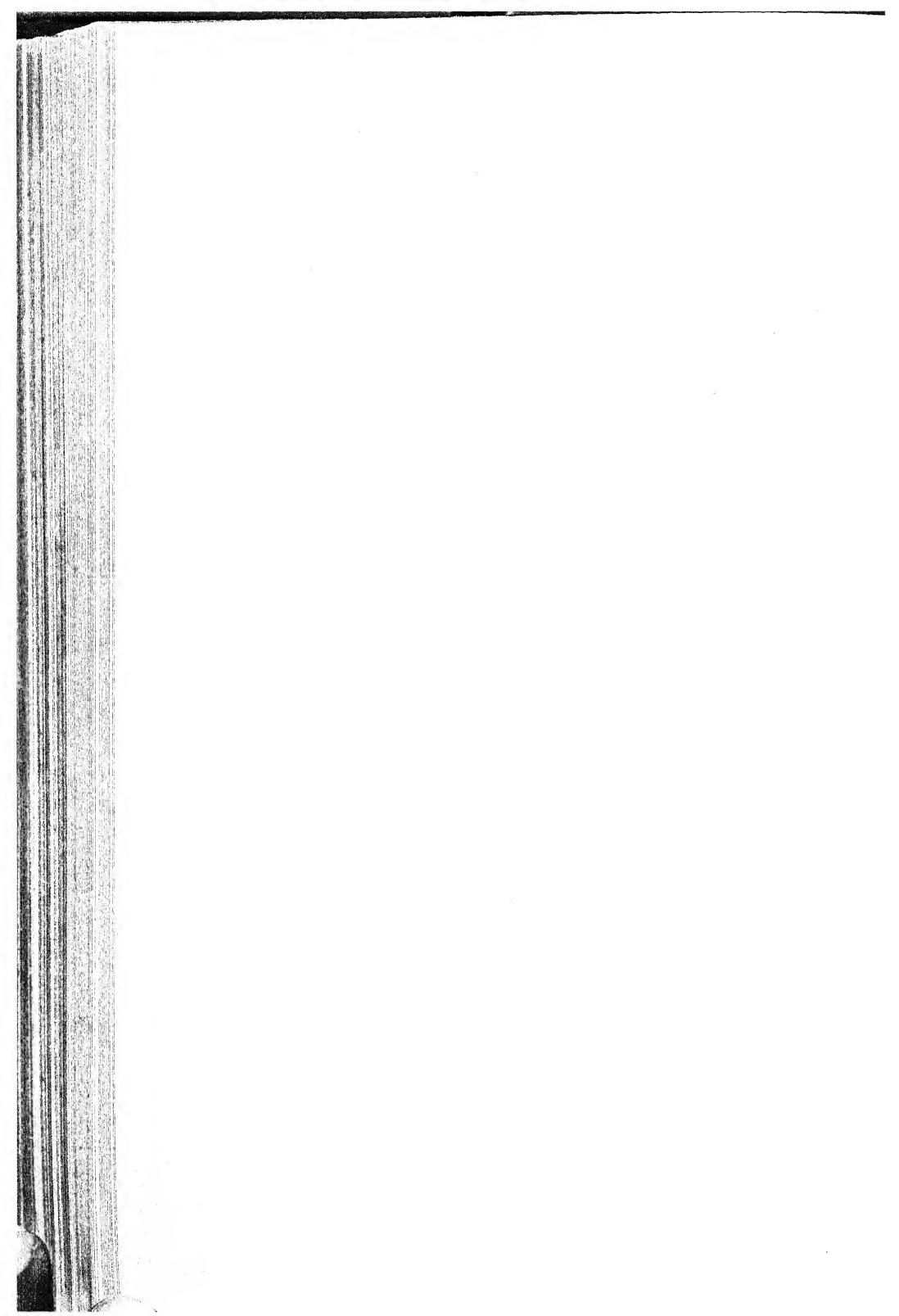
22. RECOMMENDATION WITH REGARD TO THE CIVIL SERVICE COMMISSION: SALARIES, PENSIONS, AND TENURE OF OFFICE

We recommend that, in respect of salaries, pensions, and tenure of office, the Civil Service Commission be put upon the same basis as the Board of Pension Commissioners.

E. W. BEATTY,
Chairman.
J. GEO. GARNEAU,
WALTER C. MURRAY,
Commissioners.



CHAPTER SEVEN
THE JUDICIARY



THE JUDICIARY

'The great art of riding', said the White Knight, 'is to keep your balance properly.'—
Through the Looking-Glass.

THE distinctive characteristic of the Canadian judiciary is its independence—its freedom and detachment from the legislative and executive arms of the Government. This has not always been so. In the early days of British North America the judges took an active part in politics and were strong allies of the governing clique in the colonies. They held office at pleasure, and sat in the executive and legislative councils and even in the legislative assemblies. But the agitation for responsible government was accompanied by a demand that the judiciary, like its prototype in England, should be kept out of politics; and while this was dwarfed by the more important issue, it was a grievance often stressed by the reformers. The independence of the judiciary was secured in part before the Rebellion; it formed one of the recommendations of the Durham Report; and before confederation was reached, statutes had been passed in the different colonies making a judge ineligible to hold a seat in any council or assembly, and transforming his tenure at pleasure into one during good behaviour. Since that time both custom and statute have been successfully invoked to preserve and develop the tradition of judicial freedom and impartiality—an endeavour which has derived its inspiration from the fine reputation long established by the Bench in England (Section I).

There are four general types of courts in Canada: the Supreme and Exchequer Courts of Canada, which are completely under Dominion jurisdiction; the Superior Courts of the provinces, which, with the third group, the County and District Courts, are under Dominion authority for purposes of appointment, removal, and salary, but are otherwise controlled by the provinces; and the minor provincial courts which are completely under provincial jurisdiction. Outside and above them all as the court of final appeal is the Judicial Committee of the Privy Council, a body which has, for the most part, done good work, but whose appellate jurisdiction has always been a challenge to Canadian autonomy. The rise of national feeling since the

War, combined with a growing conviction that a Canadian Court of Final Appeal would be more sensitively attuned to Canadian needs, has led to a renewed agitation for restricting or abolishing appeals to the Judicial Committee (Section II).

I

THE INDEPENDENCE OF THE JUDICIARY

A. APPOINTMENT AND REMUNERATION

(*Evidence given before the Special Committee of the House of Commons on Judge's salaries, 1928, pp. 101-18.*)

Hon. Mr. ROWELL, K.C.: The Canadian Bar Association has had the matter of judicial salaries under consideration for many months. It came before the Canadian Bar Association as a result of representations made by the official Bar associations of several of the provinces of Canada, urging that in the interests of the administration of justice there should be a substantial increase in judicial salaries. The Bar Association, at its last meeting in the city of Toronto, took the matter under consideration. It appointed a representative committee, containing members of the Bar from every province in Canada. That committee gave the whole matter the most careful consideration, canvassing it in all its aspects, and they reached certain conclusions which they embodied in a report to the Canadian Bar Association. (*Reads*):

The question of judicial salaries has been under consideration by the governing bodies of the legal profession throughout Canada for some time. The conviction has steadily grown that having regard to the cost of living and the increasing financial demands on judges, the present scale of salaries is inadequate and should be substantially increased. In August last the Canadian Bar Association at its Annual Meeting appointed a special committee of representatives from the various provinces, to consider the matter. The Committee in due course reported to the Association as follows:

1. The Committee has considered the reports of the Conference of Representatives of the Governing Bodies of the Legal Profession in Canada, and of the Governing Bodies of the Legal Profession in the provinces of Ontario, Manitoba, Alberta and New Brunswick, relating to judicial salaries, and after having given full consideration to the whole matter begs to report as follows:

2. The Committee has reached the conclusion that the salaries now paid to judges of the Supreme Court of Canada, the Exchequer Court of Canada and the Superior Courts in the provinces are, having regard to the cost of living and the increasing financial demands on judges, entirely inadequate. The Committee is of the opinion that in the public interest the judges of the Supreme Court of Canada should receive \$20,000 per annum and the judges of the Exchequer Court of Canada and the Superior Courts of the provinces \$15,000 per annum, with a reasonable additional allowance to the chief justices in such courts.

3. The Committee is much impressed by the need for increase in salary to judges of the County and District Courts, but is unable to recommend

a uniform increase. It is of opinion, however, that the judges of those courts in the large centres of population where the cost of living is high and the volume of work great should be increased up to \$9,000 per annum.

4. In connexion with these proposed increases of judicial salaries the Committee suggests that when adequate remuneration has been arranged the salary paid should cover all services and that payments for special services under statutes otherwise should be discontinued.

5. The Committee is convinced that a substantial reduction in the number of judicial positions might be made with great advantage to the administration of justice, and strongly urges that the Dominion and Provincial Governments co-operate to that end.

Hon. Mr. GORDON, K.C.: Would you mention to the Committee that some members of the Committee were to revise that report?

Hon. Mr. ROWELL, K.C. (*reads*): .

The principle of this report was adopted by the Association and a committee was thereupon appointed to bring the report to the attention of the Federal and Provincial Governments, and to respectfully urge that the recommendations of the report be carried into effect. Since the meeting of the Canadian Bar Association this report has been approved in principle by the Council of the Bar of Quebec, the Law Society of Upper Canada, the Law Society of New Brunswick and the Law Society of Manitoba.

The report of the Association has been forwarded to the Prime Minister (or Attorney-General) of each province, and the Committee now begs to present the report to the Federal Government, with the request that it receive sympathetic consideration by the Government, and that action be taken during the present session to substantially increase judicial salaries.

I may say that the Committee, appointed by the Canadian Bar Association, had power to amend the report in detail, but not in principle, and the results of their consideration is embodied in this memorial which was presented to the Government. This is the considered view of the Committee appointed by the Canadian Bar Association to report on the whole matter and present it to the Governments concerned.

Then follows a reference to the salaries already paid in Canada, with which you are familiar, and I need not repeat them. Then follows reference to the judicial salaries paid in other parts of the Empire.

. . . Mr. Chairman and members of the Committee: you will note that not only in Great Britain, but in every other Dominion, the salaries paid to Superior Court judges is substantially higher, and has been for years, than we have been paying in Canada. I think one explanation of this is that we have been influenced in judicial salaries more by the conditions existing in the United States than by the conditions existing in Great Britain and other parts of the Empire. The low salaries, which for years they paid to judges in the United States,

have undoubtedly reacted on the judicial salaries in Canada, and we have rather followed their example than the example of Great Britain and the other Dominions.

The view of the Bar Association is that once adequate salaries are provided, those payments by the provinces (i.e. extra allowances of \$1000) should cease. We believe that judges appointed under the B.N.A. Act should be paid by the Dominion, and the view of the Bar Association is that the Dominion should provide all the salaries that are necessary and these other provincial grants should cease. That applies generally except to the Surrogate Courts which are constituted by the provinces, and we make it clear in our report that we do not contemplate the elimination of any fees paid to the County Court judges.

Mr. Boys: But do you think it is just, merely for the sake of argument, that a judge in one district should receive a certain amount of money, supplemented, if you will, by \$1,500 payable by the province, and that in another province where a judge has to do practically the same work, he should get nothing from the province?

Hon. Mr. ROWELL: I quite concede that there is room for a difference of opinion upon it, and there was a difference of opinion in our Committee. Our view was that the Surrogate Court, so far as Ontario is concerned, and, I think, some other provinces, involves certain judicial duties. The province can appoint its own judge, and as a rule they name the County Court judges as Surrogate judges. I think the Act so provides at present. A certain salary pertains to that office and, in view of the representations made to our Committee, we made an exception in reference to that particular matter. . . .

We are a law-abiding people, and why are we a law-abiding people? Because we have been trained for generations in respect for the Courts, in respect for the judges, and in respect for the law. We are governed by the law: we are not governed by the police. The police could not keep this country in order, but they are necessary. It is respect for law in Great Britain, Canada, and the other Dominions, which makes life and property secure. One does not want to make comparisons with other States and communities; you can do that yourselves, but one of the great reasons for respect of life and property in Great Britain and other communities where the British system of government prevails lies in the high regard for law on the part of the masses of the people, and we do not believe you can have the highest respect for the law unless you have respect for the Courts, unless you have respect for the judges, and respect for the ability, for the integrity and for the high standing of the judiciary. It is a much bigger question than the question of the amount of money upon which a judge can live; it goes, in our view, to the whole basis of law and order in countries with institutions such as ours, and it is of the greatest

possible importance to get the best men possible to occupy seats upon the Bench of this country; and it is the poorest economy to secure men less able.

Mr. SANDERSON: There is no difficulty in securing men?

Hon. Mr. ROWELL: No, there is no difficulty in securing men, but there is difficulty in securing the best men available.

Mr. SANDERSON: That is a matter of opinion, I suppose?

Hon. Mr. ROWELL: I would not say that, with great respect. Of course there are individual cases.

Mr. TOTZKE: It does not always follow that the ablest lawyer makes the best judge?

Hon. Mr. ROWELL: That is perfectly true. Sometimes men at the Bar with common sense and courtesy, and industry, make excellent judges, some of the very best.

Hon. Mr. LAPOINTE: They must know some law as well.

Hon. Mr. ROWELL: Yes.

Mr. TOTZKE: It is not always the most successful lawyer who knows the most law.

Hon. Mr. ROWELL: I do not know whether that is a compliment to the Bench or to the jury. That is our view, that it is a very much bigger question than the simple question of what a judge can live on. Our firm conviction is that the United States has suffered in respect for law and in the administration of justice because under her institutions and her system she has in many of her States less able and representative men on the Bench than we in British communities have been able to secure. In England, it has been a tradition for generations that they should get the very ablest men on the Bench, and they provide salaries for them that they thought years ago would enable a man to maintain his position with honour and dignity. We feel that it is in the interests of Canada and in the interests of the administration of justice that we should, as nearly as possible, approach the ideal which is established in Great Britain and in the other Dominions, and which the United States is struggling hard to live up to.

Coming now to the County and District judges (*Reading*):

The judges of the County and District Courts throughout Canada are performing increasingly important functions and the tendency has been to enlarge their jurisdiction and thereby their responsibility and labour. In Ontario, through provincial legislation passed in 1919, there has been a substantial decrease in the number of judges, a reduction from seventy-five to sixty-four judges having been made in that period without, so far as the Committee is aware, any impairment of the work or dissatisfaction to either the Bar or the public.

The Committee is aware that representatives of the County and District Court judges recently met the Government and presented a memorial outlining their submission. It is hoped that their requests for an increase in salary will receive careful consideration by the Government.

Mr. TOTZKE: Would you mind telling me how provincial legislation can determine the number of judges?

Hon. Mr. ROWELL: The number of judges is determined entirely by provincial legislation. That is one of the anomalies of our federal system.

Hon. Mr. LAPointe: The Courts are organized by provinces?

Hon. Mr. ROWELL: They are organized by provinces.

Mr. TOTZKE: But the payments are made by the Dominion?

Hon. Mr. ROWELL: The payments are made by the Dominion. That is one of the anomalies in our federal system. The provinces decide the number of judges, and the Dominion appoints them and pays them. That is one reason why we have submitted these recommendations to the Governments of all the provinces. Broadly speaking, the view of the Bar Association is that we have more judges than we require for the efficient discharge of the duties pertaining to the judiciary in the provinces of Canada. I do not want to be understood as suggesting that that applies to the judges of the County Court and District Court judges. That is a matter which requires co-operation with the provinces; the Dominion of Canada cannot do it on its own account. (*Reading*): 'It is the opinion of the Bar that there should be a general increase in the salaries of all such judges, and as the report now indicates, that the salaries in large centres of population where the cost of living is high and the volume of work great should be up to \$9,000 per annum. . . .'

By Section 100 of the British North America Act the salaries of the Superior, District, and County Courts are to be paid by the Dominion, and the Committee would regret that a system should grow up that seems to prevail elsewhere, of making special grants by provincial or municipal authorities in order that adequate salaries might be paid.

Now, that is the reference to the New York and other situations.

As the report submitted indicates, the Canadian Bar Association is of opinion that the salaries paid by the Dominion should cover all services and that payment for special services under statutes or otherwise should be discontinued. This would not apply, and it was made clear at the Bar Association, that it was not intended to apply, to prevent judges of the provincial Surrogate Courts from receiving the remuneration paid by the provinces to the judges of those courts.

Now, our general view of the County Court judge situation is that the present salaries are inadequate, and that there should be a substantial increase in the salaries.

The point on which we are not able to see eye to eye with the County Court judges—and I mention it not for controversy, but just to state our position—we are not able to see eye to eye that it necessarily follows that there should be the same salaries for all the County Court judges.

Mr. LADNER: What does the extra remuneration, apart from Surrogate Court fees, refer to, so far as the work is concerned? What services does it cover? I am asking the question for the purpose of the notes.

Hon. Mr. ROWELL: I can only speak for Ontario. At our meeting, other members of the Bar spoke for certain other provinces. In Ontario, all the judges of the High Court receive \$1,000 a year for services performed under the statutes, and so on. I have forgotten just the language of it. That has been the case for a great number of years.

Mr. LADNER: It is a lump sum for all statutes.

Hon. Mr. ROWELL: For work done. A lump sum of \$1,000 a year. I think the County Court judges receive an equal amount. In certain centres I think that it is somewhat more. I think it was presented to you in the information given by Judge O'Connell from Toronto, was it not?

Mr. BOYS: The senior judge there gets \$2,600, and the others \$1,500. The judges of the counties get \$1,000. Where there are two judges, the second judge, provided business warrants it, gets two-thirds of that, \$666.

Hon. Mr. ROWELL: Yes, that is the situation as far as I am aware in the province of Ontario, Mr. Ladner. I cannot speak of any other provinces.

Mr. CARMICHAEL: Mr. Lafleur, another question which was raised here with the previous witness. Have you any suggestions to make to the Committee whereby in the appointment of judges, there might be any added precautions to make sure that the best selection is made?

Mr. LAFLEUR, K.C.: I think some benefit would result from unofficial action, if it were the practice of the Government to appoint judges on the recommendation or approval of the Bar Associations throughout the Dominion. If, at any rate an unofficial communication were made, I think it would mitigate the evil of what I may call injudicious appointment; but, of course, responsibility has to be taken by the Government, you cannot by Statute compel them to submit their nominations, or their proposals to any other body.

Mr. SANDERSON: That would make the Bar Association a rather close corporation, would it not, if the appointments were made in that way?

Mr. LAFLEUR, K.C.: Well, I assure you that, as far as the Bar is concerned, they are only too anxious to get good judicial appointments, quite independent of politics, or favour or anything of that kind, and I am sure that some good would result from unofficial conferences between the Government and the Bar Associations.

Miss MACPHAIL: Mr. Lafleur, do you believe that brilliant men at the Bar make the best judges?

Mr. LAFLEUR, K.C.: Not always, no. Some very distinguished barristers I think would make very poor judges. It has been the subject of observation, that men who were not specially distinguished as advocates have the judicial qualities which are necessary for the filling of that position.

Miss MACPHAIL: Then the desire is to raise the salaries in order that we will get better judges? If you thought that the most brilliant men at the Bar would make the best judges, I see no hope of getting them, because in the first place they make such princely salaries that we could not hope to equal them, and in the second place they might not be the favourites of the Government in power at the moment. When we are asked to increase the salaries of judges to get better men, do you not think we should safeguard the appointments, and, as you suggest, we would not have any assurance that a better salary would get us better men. Do you think it would?

Mr. LAFLEUR, K.C.: In the first place, I think it is a duty to give a living wage to the people who have accepted the positions, and are filling them now. That is my first point. Then, I submit that you should not discourage the people who are competent for the position and who have the ability to fill those positions with credit. You should not discourage them from taking such positions. In other words, do not make the salary prohibitive. You cannot make it adequate if you compare it with the emoluments of the successful barrister, or the successful merchant. That is out of the question, and I am not suggesting that, but do not make it so low that a man really has to change his mode of living. I have known more than one man who has been obliged to decline because he was living, not on an extravagant footing, but spending in Montreal about \$15,000 a year. Well, he was asked to come down to \$9,000. He had undertaken obligations, he had accustomed his family to live on a certain footing. It is not in human nature to accept a position which involves such a complete reduction of your general style of living.

Mr. SANDERSON: He would not be the only applicant at that time, and he would not be compelled to accept the appointment.

Mr. LAFLEUR, K.C.: No. The trouble is that if you have many applications, it means that instead of the position seeking the man, the man is seeking the position, and applicants as a rule are not the best men; that is, those who apply on their own behalf, and who are not the nominees of professional bodies, are not the proper persons to appoint. I speak of that as a general rule; there are exceptions, but, as a rule, the people who run after positions are not the ones in most cases who deserve them.

Hon. Mr. LAPOINTE: And they usually do not get them. So far as I am concerned, those who run after them do not get them.

Mr. LAFLEUR, K.C.: I am glad to hear that.

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Mr. HAY: Would the lobby not be more intensive if they came on the recommendation of the local Bar or the Dominion Bar Association than under the present system?

Mr. Boys: I am not for one moment suggesting that any Government should have to take the recommendation of any Bar Association; my suggestion is that before the Government makes an appointment the appointee must be a person who can get the approval of the Bar with whom he practices.

Mr. HAY: But it would mean a lobby?

The CHAIRMAN: Perhaps the argument is going a little far afield.

Hon. Mr. LAPOINTE: I do not think you are right in saying that there is such a lobby. There is none, and there has been none in my experience as Minister of Justice, for the very good reason that if any man thinks a lobby will help him, it will block his way to an appointment.

Mr. Boys: I do not say that we do, in the main, get good men, and good appointments, but I say that the appointments made are beyond doubt political appointments. Speaking not particularly of the present Government, but of all Governments of Canada, we know what happens; as soon as a vacancy occurs letters come in from political friends. I will not say always, but there are frequently men who command the influence of men who have been associated with them in politics. In the main we know that the appointments are political. Now, if we are going to get good men—and I am in favour of even men who are leaders of the Bar who are not being rewarded for political service—they should have the recommendation or approval of their respective Bars. By that I mean that where a man seeks a County Court judgeship he should have the approval of his Bar, and if it is a Dominion appointment he should have the approval of the executive of his province. I recognize, as Mr. Lafleur says, that the responsibility is with the Government, and that that responsibility cannot be shared, but I cannot see why that should not go with a recommendation which should precede the appointment.

B. TENURE AND REMOVAL

(*Canadian House of Commons Debates*, April 9, 1883, pp. 522-3.)

Mr. BLAKE (Leader of the Opposition): Before the discussion closes I wish to say a word or two with reference to that which is, after all, the most important part of this discussion in its permanent form. It is, no doubt, of very great consequence to us that returning officers should do their duty. It is, no doubt, of great consequence to us that the judges, in so far as they interfere with our elections, should also do their duty. But in so far as the conduct of this returning officer is concerned, it is supposed to be under investigation, a petition has

been filed and is now pending, and I believe the hon. member for Bothwell has objected to the jurisdiction of the Court or made some preliminary objection, which has prevented trial of the case and which, perhaps, has given us the pleasure of the hon. gentleman's presence in Parliament and the speech we have just heard. The question of the conduct of the judge, or the action of the judge, may or may not come under investigation in the course of this petition, but I wish to refer to the mode in which, the circumstances under which, the conduct of the judge has been called in question this afternoon. There is no function of ours of higher importance or greater consequence to the public weal than the function that we hold of inquiring into or censuring, or dealing with the conduct of the judiciary. Upon the character of the judges rests, no doubt, to a large extent, that confidence in the masses of the population in their decisions, which is essential to the good administration of justice, and that their conduct should come in question in a political assemblage of this kind, and particularly in connexion with the discharge of a judicial duty, closely concerned with an election, is a circumstance which shows how delicate our relations are to a judge in this particular regard. I am not one of those who at all object to this great, this highest court of all, this grand inquest inquiring by proper means into the conduct of the judges. As I have said, I believe that to be our highest, our most important and also our most delicate function. We have had occasions before now in which the conduct of judges, of a higher rank, holding their offices by a tenure in one sense more secure than that of a County Court judge—we have had occasion to consider what the procedure should be, what manner of crime or offence it should be that would be properly imputed to a judge in order that his conduct might be here called in question. I have no quarrel with the statement of the hon. First Minister, in part, when he declared that a judge's conduct ought not to be attacked, at any rate, with view to an inquiry such as this, unless the charge against him be one of serious impropriety—a charge, I think the hon. member said, which, if true, would warrant his dismissal from office. That is a just proposition to which I assent. Now, that being the nature of a charge which alone, under any circumstances, should form the foundation of an inquiry into the conduct of the judge, we have also to consider what the proper steps should be before such inquiry is proposed in this House. The hon. Minister objected to the language of my hon. friend from Huron, who mentioned the course of a petition as being the sole proper one and said that applied only to the case of a Supreme Court judge, who may be dismissed upon an address from both Houses. I do not think the observation was just. I do not know that a petition is more essential in one case than in the other. I believe it to be essential in all cases that that, or some procedure of that nature, should be adopted for this reason, that where you attack the conduct of a judge, you ought

at any rate to give him that measure of notice, which is involved in the statement of the accusation made, in plain terms, some little time at least before the House is asked to proceed upon it. What does the hon. gentleman put upon the paper? He puts a notice of motion for a Select Committee to inquire into the conduct of the judge in refusing the application made on his behalf for a re-count of the votes. The judge may have been right or may have been wrong in refusing the re-count. I purposely refrain from discussing a single word of the particulars. It is not because he was wrong in law that we would inquire into this case any more than we would inquire into the case of an erroneous judgement in the discharge of any judicial function, for I differ from the hon. member for Bothwell in the opinion that we have the right any more to interfere with a judge in the discharge of this judicial function than in the discharge of any other. We did not make him an officer of the House, but we imposed upon the County judges of Ontario and of some other provinces, and the judges of the Superior Court of the province of Quebec, certain functions in their judicial capacity; and I would have been one of the last to sustain the proposal that these functions should have been imposed on the judges, had I dreamed for a moment it could ever be suggested that they could discharge those functions in any other than a judicial capacity, had I thought they could be considered in any other sense than as judges discharging that particular function, under all the sacred obligations which appertain to a man that fills the Bench of Justice. In this matter we must hold, all the more because these are matters that do excite party feeling, that the judge who is discharging this political function is discharging it in the same spirit, protected in the same manner, and subject to the same liabilities as in the discharge of any other judicial function. We could not complain of a judge because he erred in his judgement or misconstrued the law, or misapplied the facts. Why? What have we Courts of Appeal for? We have one Court of Appeal after another. You find the County Court judges' decisions reversed in the Court of Appeal, those of the Superior Court reversed in the Court of Appeal, and those of the Appeal Court reversed in the Supreme Court which may find that the primary judge is right, and the Judicial Committee of the Privy Council finding something else altogether. There is a constant error of judgement, because judges, like other men, are fallible, and it is not an error in judgement that should form the subject even of an observation here. Therefore, upon the face of the hon. gentleman's notice of motion which simply said: I want a Select Committee to inquire into the conduct of this judge for refusing to grant me a re-count: we could find nothing, we could find no accusation against the judge, we could not even find subject for an argument as to whether the judge was right or wrong in refusing the re-count, or as to whether there had been a proper application made at the proper time, accompanied by

the proper formalities, and what the reasons were. We had none of that even before us for an interesting legal argument. But that would not have been enough if we had had all that. What was the cause, then, which could properly bring this judge's action under our consideration? It was a charge of partiality, of malfeasance in office—not that the judge erred, for all may err in judgement, but that he degraded his office, betrayed his trust, wilfully and knowingly did a wrong thing, perverted justice and judgement—that is the nature of a charge which could alone make it proper to have been brought here. Of that there is no allegation in the notice of motion; of that there was still less statement of fact, and it was not until in the course of his harangue, which was largely devoted to the vindication of the returning officer rather than to the attack upon the judge, that the hon. member stated that there had been some caucus—I think he called it—in the office of the judge, of political parties to decide—or the residence of the judge, to decide what course should be taken. He then proceeded to state that it had been declared upon the street beforehand, the judge had declared precisely the course he was about to take in the Court. Now, Sir, I maintain that these statements, which are the gravamen of the charge against the judge which the hon. gentleman has brought forward, ought in common justice, in common decency, to have been stated beforehand, so that that officer might have had an opportunity of making his statement to the tribunal before which the charges were brought. What opportunity has he had? What opportunity is he now to have to make his statement and to clear his character? The hon. gentleman does not state his charge against him, he does not make it public until he springs it in this House in the evening, and in an hour afterwards the motion is to be disposed of, and it is to be disposed of out of this High Court without the judge having an opportunity to say a word. I say then, Sir, that in whatever form you choose to observe the essentials of justice and of propriety, when we are engaged on this matter, the judge should have an opportunity to give an answer to the charge. . . . This is the course which we would have insisted upon had it been the case of a Superior Court judge, removable only upon an address; this is the course which we should insist on as preliminary in the case of a County Court judge. It is true that we cannot remove a County Court judge ourselves, but we can, as the right hon. gentleman has said, address the Crown for his removal, or we could address the Crown to issue that preliminary inquiry which, under the Act of last session, is a necessary prerequisite to further proceedings. We would not do either of those things without an investigation of our own. We would ascertain whether there was a *prima facie* case against the judge, as in the case of a judge long ago upon petition presented from the county of Ottawa in the first or second session after confederation. I think that we ought, considering that that would be

the course which we would take if malfeasance had been charged against this judicial officer, to insist that our course of procedure should give him some opportunity to answer the charge, to state his case when it was being debated before this House, as we would give to any other judicial officer. It is for this reason, and for this reason alone, that I have spoken. I hold, as I have said, that we have a right, and it may be our bounden duty, to inquire; but I hold that exercising that right and discharging that duty we ought—and it is the least we owe to the Bench and to the administration of justice—to give to them what we give to the meanest criminal who appears before their Bar, an opportunity of answering the charge, and not leave the judge, as this judge is unfortunately to be left, without that opportunity of answering here to us now the present charges which the hon. gentleman, by the course he has pursued, has made, in my opinion, most unwarrantably in point of form, whatever may be the truth of their substance.

C. FREEDOM FROM OUTSIDE INFLUENCE

Address by John S. Ewart, K.C., to Mr. Justice Perdue, on the latter's first appearance on the Court of King's Bench, Manitoba.

(*Canada Law Journal*, 1903, pp. 540-2.)

Mr. Ewart, after extending to his Lordship the congratulations of the Bar of Manitoba, proceeded as follows:

'I am firmly convinced that the recent Governmental practice of giving jobs to judges is subversive of the usefulness of the Bench. It is destructive of the popular belief in its impartiality and its integrity.

'My Lord, courts of justice stand between society and anarchy. Their strength lies in the security which they give to property and rights and in the satisfaction felt by the people in their administration of justice. It is the duty therefore, of every good citizen, and, perhaps, especially the duty of members of the Bar, to endeavour to maintain the existence of such conditions as will protect the Bench from the approach of influences which are injurious to it. Who can contemplate with equanimity or patience the present position of the judicial office in Ontario? I do not believe that it is well for the Bench that it should be shielded from all criticism, but I do think such criticism is a misfortune, and that the habit of mind which seeks explanation for decisions in personal bias of the judges is one of the most deplorable mental attitudes which can take possession of society.

'The result of the Gamey investigation, if Mr. Stratton was to be acquitted, was easily foreseen, namely, that two of the very best and purest minded of the Ontario judges are believed by probably scores of thousands of people to have been influenced by circumstances not found in the evidence. Those who know these judges, as I know them, have no such thought, or, if the language of the judgement is

calculated for a moment to raise the idea, we can easily put it aside. But we must not wonder that the general public, and particularly strong Conservatives, are not too generous, and that these judges have been attacked and condemned not only in the press, but in the legislature and upon public platforms. To a lover of his profession this is, I say, inauspicious and disquieting.

'In Dawson City, at the present moment, a judge, who, till yesterday, was a strong political partisan, is inquiring into matters in controversy between the political parties. And can we be surprised that his rulings are being telegraphed to the Opposition at Ottawa to be there discussed and denounced? While Mr. Justice Britton's regular salary runs at the usual rate, he is presented by his political friends with the finest holiday trip that the continent can afford, and a bonus of \$2,000. His judicial usefulness in every case of political complexion is forever gone. Henceforward every decision adverse to the Conservative party will evoke memories of the Tredgold Commission.

. . . 'My Lord, now that you are Mr. Justice Perdue, you will be approached by the railway companies, and will be offered free transportation over their lines of railway. It is my belief that you will refuse all such degrading offers. If it be asked whether I think that Government jobs and railway passes influence judges, I reply that human nature is weak; that motive and mental influence work subtly, and their operations are much more easily discerned by onlookers than by the one affected; that such things usually do produce a frame of mind favourable to the donors, and that I myself, with all my innate and trained respect (reverence, I would almost say) for the Bench, cannot sometimes restrain the thought that elevation to the Bench is not equivalent to inoculation against the feelings of gratitude for past favours or pleasing anticipation of those to come.

'It is a fact of some sinister significance that the political parties, the Governments and their Oppositions, have in these latter days become the most frequent of litigants and that the practice which I am venturing to condemn has grown up and expanded synchronously with the development of that condition. My Lord, I see no justification for the employment of judges in matters outside their office, and not covered by their salaries, in the assertion that it is the Governments of the day that are the employers and the paymasters. The "Government of the day" is but a euphemistic alternative for the name of some political party. If employment is accepted from Mr. Sifton and Mr. Roblin, why not from Mr. Borden and Mr. Greenway? If from the Government of the day whose members are deeply interested in much litigation, why not from the Canadian Pacific Railway, or the Hudson's Bay Company? Would it be sufficient reply to such employment to say that the judges were too pure and too little human to be affected by such engagements, and if, my Lord, judges may accept free transportation from the railway companies

and be unaffected, why may they not also accept a cask of wine from Mr. Galt, a bale of silk from Mr. Stobart, or a bag of flour from the Ogilvie Milling Company?

'My Lord, I hesitated long before deciding to say publicly what I have now addressed to your Lordship, and I have awaited for its utterance some public opportunity which might possibly attract to my words that notice which my private position would not of itself insure. I am persuaded, too, that by the judges, my words, although probably thought unnecessary, or even ill-judged, will be accepted as the true belief of one who, I can assure them, by no means stands alone in the apprehension with which he contemplates the present popular attitude towards the judiciary of his country. My Lord, the Bar and the public wish you every success in the discharge of those duties to which they believe you will bring not merely the advantages of long experience, and a conscientious desire to do justly, but, maintaining the high traditions of the British Bench, a determination to avoid those things which are tending towards its debasement.'

II

APPEALS TO THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL

A. THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL

(Viscount Haldane in *Empire Review*, July, 1927, pp. 22-30.)

. . . The prerogative of the Crown is a vague expression. There is not much left of that authority which Parliament at one time left to the Crown uninterfered with by the legislature. And what is left is not only now guarded by the constitutional necessity of advice from Ministers, who are made responsible to the House of Commons, though no longer to the House of Lords, in the way they once were, for giving it, but is also guarded by rules which cannot legally be broken. Thus the Sovereign is said to be the foundation of justice. But, since Lord Coke vindicated the power of Parliament in the days of James I, it has been clear that the Sovereign can only administer justice in Courts recognized by Parliament, and that he cannot interfere with the judges who preside in these Courts.

The Judicial Committee of the Privy Council is a Court of this character. It has had a statutory basis since the reign of William IV, and its advice is necessary before a judgement can be given by the King as the supreme justiciar of the Empire. But, none the less, it does not itself give any judgement. It simply makes a recommendation which is carried out by a formal Order made by the Sovereign at a subsequent stage in a full meeting of the Privy Council. A portion of the prerogative thus remains intact, but only for the Empire beyond the limits of Great Britain and Northern Ireland. For, within

these limits, the jurisdiction of the Sovereign as the supreme tribunal of appeal has long ago been absorbed by Parliament and taken over by the House of Lords. Throughout the rest of the Empire the old prerogative jurisdiction of the King-Emperor remains, but remains constitutionally limited by the necessity of advice, not from his Ministers, but from a Judicial Committee of the Privy Council, consisting of judges.

Indeed, with the development of the self-governing Dominions of the Crown, it is not always easy to understand why so much of the position of the King, as practically as well as theoretically the supreme tribunal to which Dominion suitors may carry appeals, has been allowed to remain in large measure intact. Canada recognizes the appeal and the right to bring it, especially in constitutional questions. The right is exercised there constantly. Australia has, in the main, abrogated this right in constitutional issues, but for ordinary civil questions she has left it practically intact. Perhaps one reason why the self-governing Dominions have abstained from claiming the uncontested title to dispose formally of their own legal disputes without permitting them to be brought here is a change in the attitude of the Judicial Committee of the Privy Council itself.

For a large number of the appeals that are brought before it special leave has to be obtained beforehand from the Committee. This is now almost always refused in questions of criminal law, and it is not given unrestrictedly in civil cases. The practice varies with the stage in self-development reached in the part of the Empire concerned. In the case of appeals from India, where there is no Central Court of Appeal, and in that of appeal from a Crown Colony leave is given in substantial cases fairly freely. But, if leave is sought to appeal from the Supreme Court of Appeal in Canada or Australia, it is different. Such leave is refused unless the question raised is one of great public interest, or involves some far-reaching principle of jurisprudence. As to South Africa, which has a unitary Government and a Court of Appeal for the entire Dominion, leave to appeal is allowed but sparingly.

In all these instances the practice of the Judicial Committee has become in material respects modified as the relation of the particular part of the Empire to the mother country has been varied by the development of the self-government of the former. Political considerations are to this extent taken into account. One reason which enables this to be done is the experience of the judges of the Judicial Committee. The majority of these are members of the House of Lords, where their duty is to be cognizant of changes in the political relations of the countries which constitute the Empire. The statesman is required as well as the judge, if the proper balance in judicial interference is to be observed. The Governments of Canada, of Australia,

and New Zealand, of South Africa, know that at any moment they could stop the system of appeal to the King in Council, and of this they are kept reminded. They are, in consequence, not only willing, but, so far as the balance of testimony shows, anxious that the system, thus sparingly recognized, should go on. It is convenient to have as the tribunal of ultimate resort a body which is detached and impartial, and which yet administers the law of the particular Dominion and administers it with the large outlook which is the result of having to take cognizance of systems of jurisprudence of varying natures. Within a single fortnight the Judicial Committee sometimes has to hear appeals concerned with laws that are Buddhist, Hindu, Mohammedan, French, Roman Dutch, and, when the appeal comes from the Channel Islands, founded on the old custom of Normandy. But, of course, a large number of the controversies turn on the English common law.

Such a judicial system is probably unique in the history of the world, and it could only have survived under a Constitution which has been throughout unwritten and continuously adapting itself to new requirements. One result of the changes which are taking place within the Empire is that the judicial business of the Privy Council is tending to grow and not to diminish. As native territories are becoming organized under new local governments, their jurisprudence is assuming a more crystallized form. Custom is turning itself into law with the aid of Crown ordinances. The outcome is litigation in the local Courts, giving rise to appeals to the Sovereign in Council. Some of the questions thus raised, for example in West Africa, are of exceptional difficulty because of the novelty of the customs embodied in the native laws, which are highly divergent from the common law traditions of this country. These controversies, however, have to be dealt with in London, for they are being more and more frequently raised, especially in connexion with the native family title to territory.

But litigation between private persons is far from being the only form of dispute which comes before the Privy Council for decision. Under the Privy Council Act of William IV, there is power given to the Crown to refer to the Committee more general controversies of almost unrestricted kinds. The result has been that, from the Dominions, questions of a general and abstract nature are constantly being argued before it. Has the Dominion Parliament of Canada power, under section 91 of the British North America Act of 1867, to pass legislation dealing with a certain subject matter, or is the particular power given, under section 92, to the provincial legislatures of Canada? How ought a boundary to be drawn between two provinces of the Dominion? On what terms is the Dominion Government entitled to take over compulsorily the interests of the shareholders in a Canadian railway? These are topics of a kind that is referred to the Committee for decision under the powers just referred to. From Australia such issues come less frequently because of the restrictive

provision inserted in the Commonwealth (Imperial) Act of 1900. And the Committee can never know beforehand what question it may be asked to decide. It is a convenient tribunal for the decision of matters in controversy of this sort because of its very remoteness, and its genuine unwillingness to claim jurisdiction has given it a certain popularity all over the Empire.

A great Privy Council judge, such as was Lord Cairns, Lord Selborne, or Lord Watson, is always esteemed throughout the Empire. The very political experience of such men has added to their value. It is a paradox, but a very real truth, that their training as politicians has made them the better judges for such Court. Only under an unwritten Constitution, the influence of which pervades the Empire and holds it in unison, could such a curious result have emerged. We are far away here from the continental conception of a judge as a mere interpreter of rigid codes.

The Judicial Committee of the Privy Council is thus a real link between the Dominions and Colonies and the mother country. If it is little known to the man in the street of the various cities which rule themselves under the aegis of the Sovereign, it has a long arm, and is a very real influence in smoothing the paths of Governments as well as of governed. It is impalpable. But few people, even of those who dwell in London, turn into Downing Street to see it sitting. And yet it is one of the King's Courts and is open to every citizen of the Empire and to any one else who chooses to walk in. There the visitor may see advocates of every shade of complexion, and with the most varying accents, pleading, or waiting to plead. A native king of a negro tribe is in evidence; or a holy man from the Far East, come to superintend the suit brought by an idol to recover his temple through his next friend, who is responsible for the costs if the suit goes against the idol; a farmer; a gold miner from British Columbia; a French advocate from Quebec—all of these may be there, confronting five elderly gentlemen, without wigs or robes, but seated round the horseshoe oaken table of the judge, and with the marks of years of immersion in legal contemplation written on their brows. It is, indeed, an unusual spectacle.

. . . How long the Judicial Committee of the Privy Council will continue to exist as the link of Empire which it is to-day, and how soon the distant parts of the world which are under the constitutional rule of the British Crown will continue to regard the Committee as a Supreme Tribunal of ultimate appeal, it is not possible to predict. Probably some other of the Dominions will one day follow the example set by Australia in constitutional questions and decide to settle finally certain of its own disputes in its own Courts. The process, if it commences, may be a rapid or a gradual one. On the other hand, the territories within the Empire which are in the early stages of their development may continue their present tendency, which is to make

a use more and more extended of the Supreme Tribunal of the Sovereign in Council. One has only to bear in mind the story of the variations in unwritten Constitution between the different parts of the possessions of the Crown and the evidence of continuous change in response to new requirements which is everywhere taking place gradually and silently in order to realize that prediction on this subject is futile. For the rest, all that can be said is that the jurisdiction appears to be at present generally recognized as a useful and convenient one, and that there is little real desire to disturb it on the part of the great majority of those concerned.

. . . It is only what one might expect to find that a tribunal with such varied duties, and working in such an atmosphere, should have produced at times great personalities. Looking back over the interval since it was given its present form by the Act of William IV, the list of the names of its judges contains those of a succession of impressive personalities. Lyndhurst, Brougham, Cottenham, Kingsdown, Campbell, Westbury, Hatherley, Parke, Willes, Cairns, Selborne, Blackburn, Watson, Hobhouse, Herschell, Macnaghten, Davey, are among the names in that list. The weight of their authority produced contentment with their decisions in the past, and it will go ill with the Tribunal if at any time, by neglect, it is made to fail to attract sufficiently competent members.

But British judges are not the only judges who sit on it now. The Chief Justices of the Dominions have places in it, and others of the Dominion judges sit there from time to time. In each summer there are two months devoted in the main to appeals which come from Canada and which are largely argued by Canadian advocates. A distinguished Canadian jurist, Mr. Justice Duff, of the Supreme Court of Canada, comes to Downing Street by the desire of the Dominion Government, and brings great experience and an acute and highly furnished mind to bear during his co-operation with his colleagues here. The Chief Justices, not only of Canada, but of the High Court of the Australian Commonwealth, of New Zealand, and of South Africa, have also sat from time to time of late years. Sir Lawrence Jenkins, the distinguished ex-Chief Justice of the High Court at Calcutta, has taken a prominent part in the hearing of Indian appeals. Altogether, there is no visible weakening of the old tradition of giving the best help available to the Committee, and the judges of the Dominions and of India have begun in a new fashion to lend their assistance. There is still more that can be done, but care must be taken to bring it about, not rashly nor hurriedly, but in a fashion in which continuity of spirit may remain unbroken.

For the spirit is everything with a tribunal of a nature so anomalous from a modern point of view as is the Judicial Committee of the Privy Council. It is hopeless to search for the secret of such success as it has had merely in printed documents. For it is not in the written

letter that the description of the real nature of the Court is to be found. The true description can only be given by those who, living here or coming from afar, have been in daily contact with the working of this extraordinary organization, and have experienced the extent to which it is continuously seeking to adapt its life to the needs which it has to fulfil as a link between the parts of this Empire.

B. CANADIAN COMMENT ON DECISIONS

I. CANADA AND THE LAW LORDS

(*Ottawa Journal*, February 22, 1912 (editorial).)

Winnipeg has received a hard crack by a decision of the Imperial Privy Council, and the equity of it is very doubtful.

A feeling has existed in Canada until recently that the availability of the Imperial Privy Council as a court of last resort for Canadian litigation is a desirable thing. Justice and the Privy Council have been largely considered to be synonymous terms. The law lords of the Privy Council have been argued to be very able and very just, men who are so far removed from our disputes in this country as to be almost certain to weigh with equal impartiality and ability the merits of cases from this side.

But a number of decisions of great importance made recently by the law lords of the Privy Council have been such as to raise doubt of the equity of that tribunal. Ground is given for the suspicion that, however disassociated the law lords of the Privy Council may be from our local prejudices or predilections, they may not be without unconscious bias due to their own surroundings and atmosphere.

In an ancient state, among people of mostly long-established habits of mind, what is supposed to be 'vested right' is usually regarded with more veneration by the ruling class than is the case in newer civilizations, and in such a society even law lords are likely enough to be tinged with too much of this colour of thought. At all events, several judgements recently given by the Imperial Privy Council suggest an undue tenderness to vested interests, seeing that in all the cases referred to the Canadian courts had previously decided the other way. Now, either our own courts or the Imperial Privy Council has read the law wrong in these cases, and as it was Canadian law which has been concerned, and Canadian contracts which were involved, we take the liberty of thinking that the law lords of the Privy Council are quite likely to have been the mistaken ones. And in all these cases it was a question of vested right against the public weal.

One suit was that of Toronto City against the Toronto Street Railway Company, in which the apparently plain intent and plain English of the street railway contract there to give to the city authorities certain rights was upset by the Privy Council after the city had won in Canadian Courts. Another case was that of the ten million

dollars which Canada has been condemned to pay to the Grand Trunk Pacific Railway Company after the Supreme Court of Canada had decided in favour of the Government. A third case is that just decided against the city of Winnipeg, giving the Winnipeg Street Railway Company power to put up poles and wires in the streets to carry electricity for sale for power and lighting purposes, although the company has no franchise to do so. This although the Manitoba Supreme Court had decided in favour of Winnipeg.

The Journal has always hitherto been an advocate of retaining to Canadians the right to appeal to the Privy Council. We confess that these cases, coming within a couple of years, shake our idea of the desirability of the option of going to the Privy Council. We believe Canadian judges to be of as high a standard of honour as English judges and to be as judicial in their frame of mind. We were merely giving credit to the greater English judges as being picked men among thousands, who, as regards Canadian suits, would have an advantage of detachment from local considerations. But possibly there may be unconscious bias of other kinds likely to do damage on the bench. And, after all, is it not reasonable to suspect that local considerations have a just place in a certain class of judicial decisions? Is it not fair that judges in suits affecting public contracts should be familiar with the trend of the public mind locally? Ought not the idea to be accepted, even in law, that the trend of public thought at the period a public contract is made is entitled to be considered as one factor bearing on the presumable intention of the contract? In such contracts is the public, which was aiming to make a fair bargain along certain palpable lines, to be long afterwards condemned by the courts to be heavily penalized for all time because some letter of the law was originally omitted or some technicality slipped in by astute lawyers for private interests, or some safeguard omitted or poorly framed by incompetent public representatives?

These are fair questions, even for a court of justice, and if they do not get attention in English Courts, they should.

At all events, the fact is decidedly discomforting that in law suits affecting three great public contracts in Canada, in all of which the issue was between the public purse or weal and private corporations, and all of which are governed by Canadian law, all the judicial decisions in Canada should have been in favour of the public and all the decisions of the Imperial Privy Council in favour of the private corporations.

2. ELIGIBILITY OF WOMEN FOR THE SENATE

(George F. Henderson in *Canadian Bar Review*, November, 1929, pp. 617-19.)

Under ordinary circumstances, a criticism of a judgement of the Judicial Committee of the Privy Council is inadvisable, but a recent

decision of that tribunal, in *Edwards et al. v. The Attorney-General of Canada et al.*, has attracted so much attention and has led to so much press criticism of the Supreme Court of Canada that proper respect for the administration of justice in Canada demands examination and comment.

Probably the first thought that will occur to one who makes a careful study of the two judgements is that while the Supreme Court, like the House of Lords, is a court of law, subject to all the restrictions which that fact implies¹ the Privy Council is a Committee advising the Sovereign, not bound to follow precedent nor to determine matters presented upon grounds of law alone, but entitled, if not obliged to advise on grounds of public policy, and to take into account matters of political expediency. Indeed, the Privy Council does not consider itself bound by its own previous decisions;² nor do English Courts regard judgements of the Privy Council as authoritative.³

It is not surprising therefore to find two fundamental differences between the judgement rendered in this matter by the Supreme Court of Canada and that of the Privy Council.

In the first place, the Supreme Court took the view that inasmuch as it was dealing with an Imperial statute passed in the year 1867, that fact necessarily afforded the basis of construction, following the line of cases of which *Sharp v. Wakefield*⁴ is perhaps that most frequently referred to.

The Privy Council judgement, however, says that:

Their Lordships do not think it right to apply rigidly to Canada of to-day the decisions and the reasonings therefor which commended themselves, probably rightly, to those who had to apply the law in different circumstances in different centuries to countries in different stages of development.

and again:

The British North America Act planted in Canada a living tree capable of growth and expansion within its natural limits.

Again, the Supreme Court felt itself bound by a number of English decisions cited, some of them quite recent, to hold that the word 'persons' is so ambiguous that, in using it, the Imperial Parliament could not be taken to have intended so distinct a departure from the common law as would be involved in making women eligible to appointment to the Senate of Canada. On the other hand, the Privy

¹ *London Street Tramways v. London County Council* (1898), A.C. 375 at 381.

² *Tooth v. Power* (1891), A.C. 284 at 292; *Re Transferred Civil Servants (Ireland) Compensation* (1929), A.C. 242 at 247-52.

³ *Abraham v. Deacon* (1891), 1 Q.B. at 521; *G.N. Railway Company v. Swaffield* (1874), L.R. 9 Exch. 132 at 138.

⁴ 23 Q.B.D. 239.

Council thinks that as a final Court of Appeal from all the different communities within the Britannic system:

This Board must take great care not to interpret legislation meant to apply to one community by a rigid adherence to the customs and traditions of another.

In other words, the doctrine of the English common law in regard to the ineligibility of women for public office must not be invoked in the construction of section 24 of the B.N.A. Act, although it is an enactment of the British Parliament, designed, as its preamble states, 'to give to Canada a Constitution similar in principle to that of the United Kingdom'.

The Lord Chancellor quotes with approval a passage from Clement's *Canadian Constitution*, 3rd edition, at page 347:

The Privy Council, indeed, has laid down that Courts of law must treat the provisions of the British North America Act by the same methods of construction and exposition which they apply to other statutes. But there are statutes and statutes; and the strict construction deemed proper in the case, for example, of a penal or taxing statute or one passed to regulate the affairs of an English parish, would be often subversive of Parliament's real intent if applied to an Act to ensure the peace, order and good government of a British colony.

But it was in dealing with the British North America Act itself that the Privy Council said in the *Lambe* case¹ that:

Questions of this class have been left for the decision of the ordinary courts of law, which must treat the provisions of the Act in question by the same methods of construction and exposition which they apply to other statutes.

Moreover two cardinal rules of statutory interpretation applied by the Supreme Court precisely as they had been by the House of Lords when dealing, in the *Nairn* case², with the right of women as 'persons' to vote at a parliamentary election under an Act of 1868, are that where an affirmative statute is open to two constructions that construction ought to be preferred which is consonant with the common law,³ and that the words of a statute must be construed as they would have been the day after the statute was passed.⁴ These two rules of universal application have simply been brushed aside by the Privy Council.

It is true, as the judgement of the Privy Council points out, that in the *Lambe* case (*supra*) their Lordships were considering questions of legislative competence, either of the Dominion or its provinces, which arise under sections 91 and 92; but it is difficult to understand

¹ 12 A.C. 575 at 579.

² (1900) A.C. 147.

³ *Rex v. Bishop of Salisbury* (1901), 1 Q.B. 573, 577.

⁴ *Sharp v. Wakefield*, 23 Q.B.D. 239 at 243.

why the provisions of the Act on which these conditions arose should be subject to one rule of construction, and section 24 of the same Act to another; or why, for instance, in the one case the fact that the statute was enacted in 1867 must be borne in mind and effect given to the intent of the Parliament of that day, whereas, in the other, the Act must be considered in a broad and liberal spirit, and should (as a matter of political expediency?) be held to provide for the Canada of to-day, according to ideas now prevalent, however greatly they may differ from those which obtained when the statute was enacted.

C. THE PRIVY COUNCIL AND MINORITY RIGHTS

(F. R. Scott in *Queen's Quarterly*, Autumn, 1930.)

. . . It is not the purpose of the present writer to rehearse all the arguments for and against the Privy Council appeal. . . . It is proposed to consider one argument frequently put forward in defence of the present system of appeals, and certainly the one which receives the widest degree of popular support in the province of Quebec. This is the argument that the Privy Council is the defender of minority rights.

Those who hold this view look upon the Judicial Committee of the Privy Council as the umpire of the Canadian Constitution, a referee who sees that justice is done as between majority and minority. The Canadian Supreme Court, they say, composed as it is of judges only two of whom are chosen from the province of Quebec, must always represent the majority opinion in the Dominion, and therefore when any matter comes up for decision in which minority rights are involved a really impartial judgement can hardly be expected. On the other hand, it is argued that the Privy Council, in its cool and distant chambers, can view our little animosities from an Olympian height, and dispense with ease and magnanimity a superior, almost divine justice. Thus the spirit of equality and fairness on which Confederation was based is preserved by the appeal, and Canada is saved from the internal strife which the suspicion of prejudice in the decisions of the Supreme Court would inevitably provoke. The Privy Council, in other words, is endowed by this theory with all the characteristics which Canadians would like a final Court of Appeal to possess if they could create an ideal one for the working of their legal and constitutional system.

How far does this theory of the function of the Privy Council fit the facts of Canadian judicial history? The Judicial Committee and the Canadian Supreme Court have now been delivering judgements contemporaneously upon Canadian law for sixty-five years, so that there has been plenty of opportunity of testing which of the two has shown the more consideration for the claims of the minority in the Dominion. Of course it is impossible to discover the motives that

may have influenced a particular judge or court in giving a particular decision, and any attempt to weigh degrees of partiality would be quite valueless. Results may be weighed, nevertheless, without imputing praise or blame, and it will be valuable to analyse the principal decisions which have actually been rendered by the Privy Council and the Supreme Court in cases dealing with racial and religious issues, and to discover in which of the two Courts the claims of the minority appear to have received the greater satisfaction. We shall then be in a position to decide whether or not the existence of the appeal has been of any real value to the French-Catholic minority.

Of all the legal disputes which have closely concerned minority rights, those arising under section 93 of the British North America Act, in which is preserved the right of minorities to protection of their educational privileges, have always occasioned the greatest controversy. The first important case under this section arose out of the passing by the legislature of New Brunswick of the Common School Act of 1871, which created non-sectarian public schools for the province. Previous to this enactment there had been in existence in the province a system of parish schools of an undenominational nature which by tacit agreement had been allowed to assume a Catholic character in every district in which the majority were of that faith. With the disappearance of the parish schools the Catholics saw that they would lose this form of unofficial control in the Catholic districts, and they consequently opposed the new Act on this ground. The Supreme Court of New Brunswick¹ upheld the statute as being within the powers of the provincial legislature, and this judgement was approved by the Privy Council in another case,² where it was pointed out that the section protected legal privileges only, and not *de facto* privileges such as the Catholics in the province had been enjoying. The Canadian Supreme Court was not then in existence, so it is impossible to say what view it would have taken of the matter, but the point remains that the claims of the minority were not accepted by the Judicial Committee.

The next matter under dispute was the famous Manitoba School Act of 1890. The bitter animosity aroused by this Act, the great and unfortunate gulf which it created at the time between the two races, need not be referred to here save as proof that if ever the Protestant majority on the bench of the Canadian Supreme Court might be expected to show its religious and racial prejudices, this was the moment *par excellence*. And what was the result? By a unanimous decision³ the Court declared the Act to be unconstitutional, as it deprived Catholics of the right to have their children taught according to the rules of their Church and compelled them to contribute to the

¹ *Ex parte Renaud*, 2 Cartwright, 445.

² *Maher v. Town of Portland*, 2 Cartwright, 486 note.

³ *Barrett v. Winnipeg*, 19 S.C.R. 374.

support of schools to which they could not conscientiously send their children. Protestant feeling throughout the country was thus completely ignored. Not a single English-speaking judge opposed the Catholic contention; what is more, the Chief Justice, Sir William Ritchie, was the judge who had sat as chief justice of the New Brunswick court in the Renaud case. By this decision the highest Canadian Court vindicated its right to be considered a truly impartial court of justice.

The subsequent history of the controversy is well known. The Privy Council overruled the decision of the Supreme Court,¹ and, contrary to the wishes of every Catholic, declared the Act to be *intra vires*. Two years later the question arose as to whether, although the Act was valid, there could be an appeal to the Dominion Government by the disapproving minority in view of other provisions of section 93. On this point the Canadian Supreme Court showed considerable difference of opinion.² Taschereau and Gwynne JJ. considered that the matter was already disposed of by the earlier Privy Council judgement, and that no such appeal was possible; Ritchie C. J. reached the same conclusion on other grounds; Fournier and King JJ. considered that there was an appeal. It is obvious that the court did not divide along racial or religious lines, and that the Privy Council judgement had confused the issue. When this second question reached the Privy Council the right to appeal to the Dominion Government was upheld,³ to the great satisfaction of French Canada. But if the Supreme Court had been the final court of appeal in this legal battle there would have been a complete victory for the minority claims, since the Manitoba Act would have been invalidated in the first place and therefore no appeal to the Dominion Government would have been necessary. As it was Manitoba kept her public schools and the minority had to accept the Laurier compromise.

No other important question turning upon section 93 of the British North America Act came before the Privy Council until the Ontario Regulation 17, which restricted the use of the French language in certain Ontario schools, was attacked. This dispute did not reach the Canadian Supreme Court, being taken direct to London from the Ontario Courts, and we do not know what attitude would have been adopted by the highest Canadian judges. The Judicial Committee, however, upheld the Regulation,⁴ so the minority contention could not have fared worse. Moreover, their Lordships took occasion to remark in the course of their judgement that the use of the French language in matters of education was not a 'natural right' vested in the French-speaking population and protected by the Act of 1867, the only rights so protected being, in their opinion, religious and not

¹ *Winnipeg v. Barrett*, 1892, A.C. 445.

² 22 S.C.R. 577.

³ *Brophy v. Manitoba*, 1895, A.C. 202.

⁴ *Ottawa Separate School Trustees v. Mackell*, 1917, A.C. 62.

linguistic, thus disposing legally of a contention not infrequently put forward, that the use of their language is guaranteed generally by the British North America Act to French-Canadians throughout the Dominion.

On a second case arising out of the same issue¹ the Privy Council decided that the Ontario Legislature had no power to depose or replace the trustees of separate schools refusing to enforce the Regulation, since the right to elect these trustees was one clearly guaranteed to the Catholic minority at the time of confederation. But care was taken to point out that there were other legal means by which the Regulation could be made effective. To quote the precise words of the judgement:

‘Their Lordships do not anticipate that the Appellants (the Separate School Trustees) will fail to obey the law now that it has been finally determined. They cannot, however, assent to the proposition that the appellant board are not liable to process if they refuse to perform their statutory obligations, or that in this respect they are in a different position from other boards or bodies of trustees entrusted with the performance of public duties which they fail or decline to perform.’

It is plain that their Lordships thought that the Regulation not only should, but could be enforced.

Finally we have the *Tiny Township* case² in which the Catholic minority in Ontario claimed the right to a greater degree of control over the courses of study in their separate schools, to a larger share in the educational grant from public funds, and to exemption from assessments for the support of continuation and high schools. Here the Canadian Supreme Court divided equally, three Protestant judges against three Catholic, so the appeal was dismissed and the decisions of the Ontario courts (which were opposed to the claims) were allowed to stand. The Privy Council confirmed the dismissal. The result is thus not conclusive of the point under discussion, but those who believe that the dissentient Catholic judges were right in their view of the law, must admit that the Privy Council showed itself no more impartial than the Supreme Court, while those who think that they were mistaken must acquit the Protestant judges of any suspicion of prejudice.

If one turns to religious and racial questions other than those relating to education there is not a great deal of evidence to be found, but such as there is would seem to confirm what has already been hinted at, namely that no additional protection has ever been secured for the minority in Canada by the appeal to the foot of the throne. In the *Guibord* case, an ancient *cause célèbre*, the Privy Council³ denied the right of the Roman Catholic ecclesiastical authorities in

¹ *Ottawa Separate School Trustees v. Ottawa Corporation*, 1917, A.C. 76.

² 1927, S.C.R. 637; 1928, A.C. 363.

³ L.R., 1874, vol. vi, p. 157.

Quebec to prohibit the burial in consecrated ground of a member of their faith who had died while connected with a prohibited institution,¹ but who had not been excommunicated or otherwise placed beyond the pale—a judgement which overruled eight out of nine Quebec judges and was so unpopular that the burial had to be carried out under the protection of a Montreal regiment. The conviction of Louis Riel in 1885 was another case which aroused considerable racial feeling: here the Privy Council affirmed the conviction and disappointed the minority by refusing leave to appeal.² Both these cases went direct to London from provincial courts. In the *Marriage Reference* case in 1912 the Privy Council and the Supreme Court³ agreed in declaring invalid a proposed Dominion statute intended to offset the *ne temere* decree by enacting that marriages performed by any authorized person should be valid throughout the Dominion regardless of the religious faith of the parties. Here the Privy Council was undoubtedly popular with the minority—but so also was the Supreme Court. In the *Despatie-Tremblay* case⁴ Quebec opinion was considerably offended when the Judicial Committee denied that certain impediments to matrimony recognized by canon law were part of the civil law of the province. This case again was not taken to the Supreme Court, although three of the judges of that Court had pronounced in a similar sense in the *Marriage Reference* case, and conceivably might have decided the matter as did the Privy Council had it come before them.

In the period under review, therefore, we find that the Privy Council on the whole has accorded slightly less recognition than has our own Supreme Court to the demands of the minority. The writer is aware of no instance where an important point affecting minority claims or aspirations has been decided more favourably to French Canada in London than at Ottawa; and the reverse is true of the Manitoba School question viewed as a whole. A minority claim appears thus to have a better chance of success before the Canadian Court than before the Imperial body. Certainly there is not the slightest evidence that the appeal to the latter is a valuable safeguard, unless it be for the majority. This conclusion is perhaps scarcely surprising, if one reflects for a moment upon the nature of the problem. The problem is how to secure absolutely impartial judgements in cases involving disputes between two sections of our population divided by race into French and English, and by religion into Catholic and Protestant. Obviously an ideal Supreme Court would have to consist of honest atheists, Mohammedans, or some other indifferent race and creed. This type of Court being at present unobtainable, it would seem to follow that the next best Court would be one in

¹ The Institut Canadien, which professed to believe in religious toleration.

² L.R. 10, A.C. 675. ³ 46 S.C.R. 132; 1912, A.C. 880.

⁴ 1927, 1 A.C. 702.

which both opposing points of view were represented. If this is true then the Canadian Supreme Court is more likely to be unprejudiced than the Privy Council, since the former must have *at least* two members who are appointed from the bar of Quebec, and who thus speak for the minority, whereas the latter is almost certain to be entirely Protestant. By carrying a religious dispute to London an atmosphere not more favourable, but rather less favourable to impartiality, is thus secured. It is sometimes thought that the members of the Judicial Committee, by their superior training and experience, are less liable to be influenced by such personal motives. But it is difficult to believe that in this regard the English judge is any less a human being than the Canadian judge; and the type of experience required in this instance is experience in toleration, in which the Canadian judge is just as likely to have had as great a training. It is also thought that the three thousand miles of the Atlantic Ocean somehow or other lend a greater degree of impartiality to the Privy Council judgements. But this view again appears illogical, for the rivalry between Catholic and Protestant, in so far as it may exist, is by no means confined to the shores of Canada. Moreover, the very fact of distance means that the Imperial Court is less responsive to public opinion and more free from immediate contact with the disapproval which an unsatisfactory judgement would entail. The English and Protestant judges of the Supreme Court must be keenly aware at all times that they have a peculiarly difficult duty to perform in relation to minorities; they know that their every action will be watched, and every decision carefully scrutinized by adverse critics. Their very closeness to the scene of controversy thus compels a more cautious attitude and a more thorough deliberation.

What the Privy Council has done in our Constitution is to safeguard, not minority rights, but provincial rights. An elaboration of this statement is not possible here, but it may be stated with little fear of contradiction that the Privy Council has carried its protection of provincial claims so far that to-day we have in Canada a distribution of legislative powers quite unlike that which was agreed upon at confederation, and one which by its undue enlargement of the provincial sphere, considerably weakens the efficient and harmonious structure of our Constitution. Possibly the Judicial Committee has thought that in cutting down the Dominion powers they were assisting the minority in Canada. If so they were grievously mistaken. It is little comfort for the French-Canadian minorities in the Maritimes, in Ontario, Manitoba, and Saskatchewan to realize that the provincial governments on which they depend for their educational privileges and their civil rights have had their powers enlarged, and that the Dominion Parliament, in which the French-speaking members must always exercise a powerful influence, has been deprived of much of its former capacity. Provincial rights and minority rights would be

identical if the minority were confined to the province of Quebec. But as the French population spreads throughout the Dominion—and it is so spreading every day—it is surely to its interest to have more power concentrated at Ottawa, where it will control for many years to come a larger degree of authority than it can in any province other than Quebec.

It is submitted that the belief in the Privy Council appeal as a safeguard for minority rights is a popular myth, devoid of any foundation in fact. If so, a principal ground for maintaining the appeal disappears.

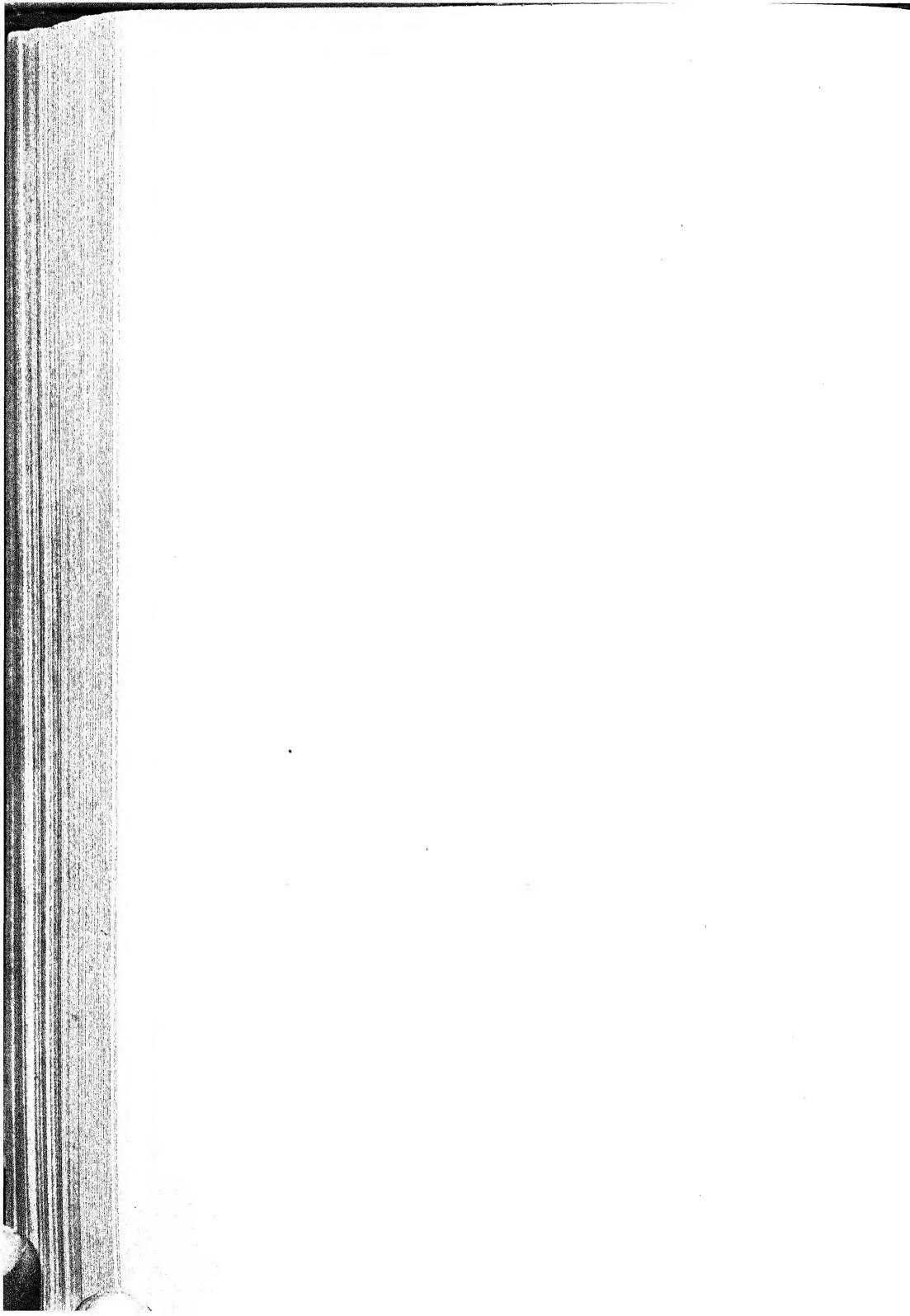
D. REPORT OF THE IMPERIAL CONFERENCE, 1926

(*Canadian Sessional Papers, 1926-7, No. 10, pp. 16-17.*)

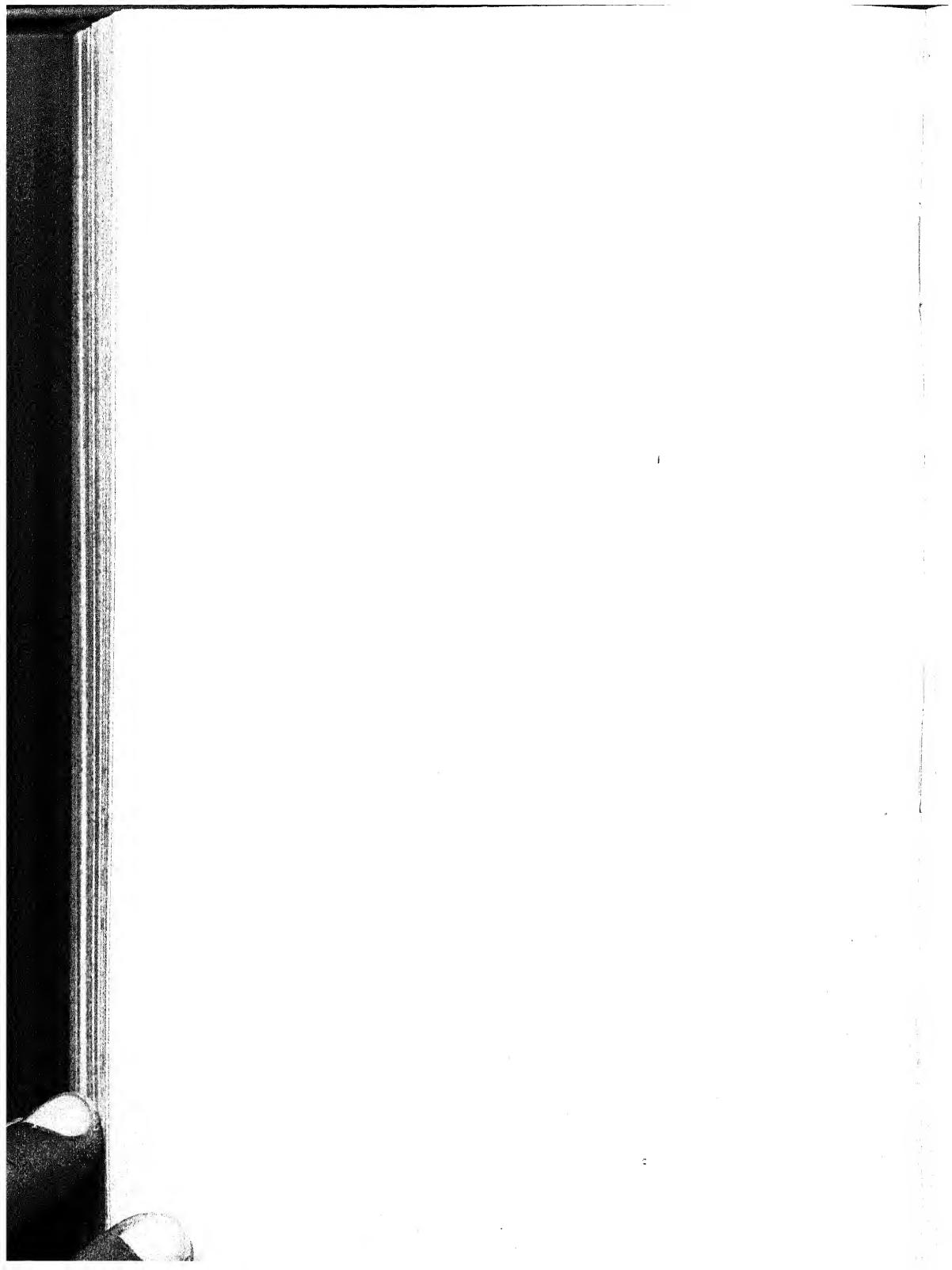
(e) APPEALS TO THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL

Another matter which we discussed in which a general constitutional principle was raised concerned the conditions governing appeals from judgements in the Dominions to the Judicial Committee of the Privy Council. From these discussions it became clear that it was no part of the policy of his Majesty's Government in Great Britain that questions affecting judicial appeals should be determined otherwise than in accordance with the wishes of the part of the Empire primarily affected. It was, however, generally recognized that where changes in the existing system were proposed which, while primarily affecting one part, raised issues in which other parts were also concerned, such changes ought only to be carried out after consultation and discussion.

So far as the work of the committee was concerned, this general understanding expressed all that was required. The question of some immediate change in the present conditions governing appeals from the Irish Free State was not pressed in relation to the present conference, though it was made clear that the right was reserved to bring up the matter again at the next Imperial Conference for discussion in relation to the facts of this particular case.



CHAPTER EIGHT
POLITICAL PARTIES



POLITICAL PARTIES

She went on and on, a long way, but, wherever the road divided, there were sure to be two finger-posts pointing the same way, one marked 'TO TWEEDLEDUM'S HOUSE', and the other 'TO THE HOUSE OF TWEEDLEDEE'.

'I do believe,' said Alice at last, 'that they live in the *same* house! I wonder I never thought of that before.'—*Through the Looking-Glass*.

POLITICAL parties are quite unknown to the Canadian written Constitution, and their organization and functions are almost entirely extra-legal. The necessity of controlling many party activities by law, which has become so important in the United States, has not yet been felt in Canada, chiefly because party abuses, while frequent, have rarely been grossly oppressive or corrupt. Yet these uncontrolled, irresponsible, semi-secret bodies are in many respects the real government of Canada. The organization and leaders of the majority party are the driving power in and behind the Government: they are the pistons, spark plugs, carburettor, and what not, well concealed under an ornamental hood, which drive the car, and the exact functioning of which can be adequately understood only by those expert mechanics who devote a lifetime to such work.

Canadian political parties have been very much to the front during the past ten or twelve years. Each party has made a recent effort to formulate its distinctive beliefs; though many sceptics still assert that Liberalism and Conservatism, at least, have remained indistinguishable in practice (Section I). The Liberal National Convention of 1893 had long remained the only venture of its kind in Canada, and it had confined itself to the innocuous task of drawing up a platform. In the years following, however, party conventions in the provinces gradually began to assume the power of choosing the provincial party leaders; and in 1919 the Liberals ventured on the hazardous experiment of convening a National Convention not only for the purpose of stating a platform but also to choose a successor to Sir Wilfrid Laurier. The Conservatives distrusted the idea; but after trying out an unsatisfactory one of their own in 1920, they took the plunge in 1927 (Section II (A)). If the success of the venture is to be measured by the votes cast at the ensuing election, both Liberal and Conservative Conventions have been amply justified by the event. The new

departure in national assemblies, however, has brought up new problems. In the old days—fifteen or more years ago—a party leader issued his manifesto and it thereupon became the party platform. Whatever appeared in it was largely, if not entirely, of his choosing. But to-day the platform comes from the National Convention, and the leader or leaders find themselves continually embarrassed by planks which have been built into the structure by people who possess worthy ideas but little practical judgement, and who have no responsibility whatever in carrying out the ideas in practice. The endeavour of holding the leaders to the platform and the kindred effort of curbing any new departure foreign to party policy, has not, so far, been very important; but it is apt to assume larger proportions as the popular participation in party activities increases (Section II, (B) (C)). Further developments during the past fifteen years have been the two revolts against the old parties—the formation of the Union Government in 1917, and the rise of the Progressives in Western Canada after the War (Section III).

I

DISTINGUISHING FEATURES OF CANADIAN POLITICAL PARTIES

A. PARTY PLATFORMS

1. FARMERS' PLATFORM, 1918

(*Canadian Annual Review*, 1919, pp. 365-8.)

(This platform, representing the views of the organized farmers of Canada from the prairie provinces and Ontario, was passed by the Canadian Council of Agriculture in November, 1918, and was later ratified by the local organizations.)

1. A League of Nations as an International organization to give permanence to the world's peace by removing old causes of conflict.

2. We believe that the further development of the British Empire should be sought along the lines of partnership between nations, free and equal, under the present governmental system of British constitutional authority. We are strongly opposed to any attempt to centralize Imperial control. Any attempt to set up an independent authority with power to bind the Dominions, whether this authority be termed Parliament, Council, or Cabinet, would hamper the growth of responsible and informed democracy in the Dominions.

3. Whereas Canada is now confronted with a huge national war debt and other greatly increased financial obligations, which can be most readily and effectively reduced by the development of our natural resources, chief of which is agricultural lands;

And whereas it is desirable that an agricultural career should be made attractive to our returned soldiers and the large anticipated immigration, and owing to the fact that this can best be accomplished by the development of a national policy which will reduce to a minimum the cost of living and the cost of production;

And whereas the War has revealed the amazing financial strength of Great Britain which has enabled her to finance, not only her own part in the struggle, but also to assist in financing her Allies to the extent of hundreds of millions of pounds, this enviable position being due to the free-trade policy which has enabled her to draw her supplies freely from every quarter of the globe and consequently to undersell her competitors on the world's market, and because this policy has not only been profitable to Great Britain, but has greatly strengthened the bonds of Empire by facilitating trade between the Motherland and her overseas Dominions—we believe that the best interests of the Empire and of Canada would be served by reciprocal action on the part of Canada through gradual reductions of the tariff

on British imports, having for its objects closer union and a better understanding between Canada and the Motherland and at the same time bringing about a great reduction in the cost of living to our Canadian people.

And whereas the Protective Tariff has fostered combines, trusts, and 'gentlemen's agreements' in almost every line of Canadian industrial enterprise, by means of which the people of Canada—both urban and rural—have been shamefully exploited through the elimination of competition, the ruination of many of our smaller industries and the advancement of prices on practically all manufactured goods to the full extent permitted by the tariff;

And whereas Agriculture—the basic industry upon which the success of all other industries primarily depends—is unduly handicapped throughout Canada as shown by the declining rural population in both eastern and western Canada, due largely to the greatly increased cost of agricultural implements and machinery, clothing, boots and shoes, building material and practically everything the farmer has to buy, caused by the Protective Tariff, so that it is becoming impossible for farmers generally, under normal conditions, to carry on farming operations profitably;

And whereas the Protective Tariff is the most wasteful and costly method ever designed for raising national revenue, because for every dollar obtained thereby for the public treasury at least three dollars pass into the pockets of the protected interests, thereby building up a privileged class at the expense of the masses, thus making the rich richer and the poor poorer;

And whereas the Protective Tariff has been and is a chief corrupting influence in our national life because the protected interests, in order to maintain their unjust privileges, have contributed lavishly to political and campaign funds, thus encouraging both political parties to look to them for support, thereby lowering the standard of public morality;

Therefore be it resolved that the Canadian Council of Agriculture, representing the organized farmers of Canada, urges that as a means of remedying these evils and bringing about much needed social and economic reforms, our tariff laws should be amended as follows:

(a) By an immediate and substantial all-round reduction of the customs tariff.

(b) By reducing the customs duty on goods imported from Great Britain to one-half the rates charged under the general tariff, and that further gradual, uniform reductions be made in the remaining tariff on British imports that will ensure complete Free Trade between Great Britain and Canada in five years.

(c) That the Reciprocity Agreement of 1911, which still remains on the United States statute books, be accepted by the Parliament of Canada.

(d) That all foodstuffs not included in the Reciprocity Agreement be placed on the free list.

(e) That agricultural implements, farm machinery, vehicles, fertilizers, coal, lumber, cement, illuminating fuel and lubricating oils be placed on the free list, and that all raw materials and machinery used in their manufacture also be placed on the free list.

(f) That all tariff concessions granted to other countries be immediately extended to Great Britain.

(g) That all corporations engaged in the manufacture of products protected by the customs tariff be obliged to publish annually comprehensive and accurate statements of their earnings.

(h) That every claim for tariff protection by any industry should be heard publicly before a special Committee of Parliament.

4. As these tariff reductions may very considerably reduce the national revenue from that source, the Canadian Council of Agriculture would recommend that, in order to provide the necessary additional revenue for carrying on the government of the country and for the bearing of the cost of the War direct taxation be imposed in the following manner:

(a) By a direct tax on unimproved land values including all natural resources.

(b) By a graduated personal income tax.

(c) By a graduated inheritance tax on large estates.

(d) By a graduated income tax on the profits of corporations.

(e) That in levying and collecting the Business Profits Tax the Dominion Government should insist that it be absolutely upon the basis of actual cash invested in the business and that no considerations be allowed for what is popularly known as watered stock.

(f) That no more natural resources be alienated from the Crown, but brought into use only under short-term leases, in which the interests of the public shall be properly safeguarded, such leases to be granted only by public auction.

5. With regard to the returned soldier we urge:

(a) That it is the recognized duty of Canada to exercise all due diligence for the future well-being of the returned soldier and his dependants.

(b) That demobilization should take place only after return to Canada.

(c) That first selection for return and demobilization should be made in the order of length of service of those who have definite occupation awaiting them or have other assured means of support, preference being given first to married men and then to the relative need of industries, with care to ensure so far as possible the discharge of farmers in time for the opening of spring work upon the land.

(d) That general demobilization should be gradual, aiming at the discharge of men only as it is found possible to secure steady employment.

(e) It is highly desirable that, if physically fit, discharged men should endeavour to return to their former occupation, and employers should be urged to reinstate such men in their former positions wherever possible.

(f) That vocational training should be confined to those who while in the service have become unfitted for their former occupation.

(g) That provision should be made for insurance at the public expense of unpensioned men who have become undesirable insurance risks while in the service.

(h) That facilities should be provided at the public expense that will enable returned soldiers to settle upon farming land when, by training or experience, they are qualified to do so.

6. We recognize the very serious problem confronting labour in urban industry resulting from the cessation of war, and we urge that every means, economically feasible and practicable, should be used by federal, provincial, and municipal authorities in relieving unemployment in the cities and towns: and, further, recommend the adoption of the principle of co-operation as the guiding spirit in the future relations between employer and employees—between capital and labour.

7. A land settlement scheme based on a regulating influence in the selling price of land. Owners of idle areas should be obliged to file a selling price on their lands, that price also to be regarded as an assessable value for purposes of taxation.

8. Extension of co-operative agencies in agriculture to cover the whole field of marketing, including arrangements with consumers' societies for the supplying of foodstuffs at the lowest rates and with the minimum of middleman handling.

9. Public ownership and control of railway, water and aerial transportation, telephone, telegraph and express systems, all projects in the development of natural power, and of the coal-mining industry.

10. To bring about a greater measure of democracy in government, we recommend:

(a) The immediate repeal of the War-Time Elections Act.

(b) The discontinuance of the practice of conferring titles upon citizens of Canada.

(c) The reform of the Federal Senate.

(d) An immediate check upon the growth of government by Order-in-Council, and increased responsibility of individual members of Parliament in all legislation.

(e) The complete abolition of the patronage system.

(f) The publication of contributions and expenditures both before and after election campaigns.

(g) The removal of press censorship upon the restoration of Peace and the immediate restoration of the rights of free speech.

(h) The setting forth by daily newspapers and periodical publications, of the facts of their ownership and control.

- (i) Proportional representation.
- (j) The establishment of measures of Direct Legislation through the initiative, referendum, and recall.
- (k) The opening of seats in Parliament to women on the same terms as men.

2. LIBERAL PLATFORM, 1919

(*Proceedings, National Liberal Convention, 1919*, pp. 203-9.)

The following are the most important resolutions passed by the National Liberal Convention, 1919:

Resolution on Canadian Autonomy.

Resolved that we are strongly opposed to centralized Imperial control and that no organic change in the Canadian Constitution in regard to the relation of Canada to the Empire ought to come into effect until, after being passed by Parliament, it has been ratified by vote of the Canadian people on a Referendum.

Report of the Committee on Party Organization adopted as a Resolution.

The Committee on party organization beg to report as follows:

We recommend the formation of a National Liberal Organization Committee to be constituted as follows:

1. The President, who shall be the Leader of the Liberal party for Canada;
2. Nine Vice-Presidents, one from each province, who shall be named by the Liberal Association of each province. In the case of any province in which there is no provincial Liberal Association, the Liberal Premier or Leader of the Opposition shall nominate the Vice-President.
3. A National Council of fifty-four, one of whom shall be the provincial Liberal Premier or Leader of the Opposition, or his Nominee, as the case may be, and five others to be selected by the Liberal Association for the province, where one exists, or by the Liberal Members of the House of Commons in a province where there is no Liberal Association for such province.

4. The Members of the Council in each province to be a Finance Committee to receive subscriptions for the expenses of the Committee.

5. The Committee shall select a National Organizer, who shall have charge of the Head Office, which shall be located in Ottawa.

Resolution on the Tariff.

That the best interests of Canada demand that substantial reductions of the burdens of Customs taxation be made with a view to the accomplishing of two purposes of the highest importance: *First*: diminishing the very high cost of living which presses so severely

on the masses of the people; *second*: reducing the cost of the instruments of production in the industries based on the natural resources of the Dominion, the vigorous development of which is essential to the progress and prosperity of our country.

That, to these ends, wheat, wheat flour and all products of wheat; the principal articles of food; farm implements and machinery; farm tractors; mining, flour and saw-mill machinery and repair parts thereof; rough and partly dressed lumber; gasoline, illuminating, lubricating and fuel oils; nets, net-twines and fishermen's equipments; cement and fertilizers, should be free from Customs duties, as well as the raw material entering into the same.

That a revision downwards of the tariff should be made whereby substantial reductions should be effected in the duties on wearing apparel and footwear, and on other articles of general consumption (other than luxuries), as well as on the raw material entering into the manufacture of the same.

That the British preference be increased to 50 per cent. of the general tariff.

And the Liberal party hereby pledges itself to implement by legislation the provisions of this resolution when returned to power.

Resolution on Labour and Industry.

Resolved that the Committee recommends that the National Liberal Convention accept in their entirety as a part of the Liberal Platform, in the spirit they have been framed and in so far as the special circumstances of the country will permit, the terms of the Labour Convention and General Principles associated with the League of Nations and incorporation in the Conditions of Peace.

AND FURTHER RESOLVED

1. That the introduction into the government of industry of principles of representation whereby labour and the community, as well as capital, may be represented in industrial control, and their interests safeguarded and promoted in the shaping of industrial policies.

2. That in so far as may be practicable, having regard for Canada's financial position, an adequate system of insurance against unemployment, sickness, dependence in old age, and other disability, which would include old age pensions, widows' pensions, and maternity benefits, should be instituted by the federal Government in conjunction with the Governments of the several provinces; and that on matters pertaining to industrial and social legislation an effort should be made to overcome any question of jurisdiction between the Dominion and the provinces by effective co-operation between the several Governments.

3. The representation of labour on federal commissions pertaining to labour matters.
4. Effective legislation for the conservation of human life and health.
5. The representation of labour on the Board of Directors of the Canadian National Railways.
6. That the system of re-training soldiers, unfitted for their past work because of physical injuries, be extended to disabled workers in industry.
7. More effective restriction of Chinese immigration.
8. The federal incorporation of co-operative associations.
9. The acceptance of the principle of proportional representation.
10. Immediate and drastic action by the Government with respect to the high cost of living and profiteering.
11. Restoration of the control of the executive by Parliament, and of Parliament, by the people through a discontinuance of Government by Order in Council and a just franchise and its exercise under free conditions.

Resolution on Encouragement to Agriculture.

In the interest of agricultural production and development it is expedient to encourage co-operation and induce greater investment in farming; therefore it is deemed expedient to utilize the national credit to assist co-operative Agricultural Credit Associations to provide capital for agriculture at the lowest possible rates.

With the object of reducing the high cost of living by eliminating, as far as possible, the waste and expense in handling food products between the producer and consumer, it is expedient to extend the principle and system of Canadian Government Elevators and to provide interior and terminal cold-storage warehouses equipped for the assembling, assorting, preparing, storing, and grading of food products in order that co-operative organizations and others may have available to them reliable, modern equipment, for the distribution of farm products in superior condition and at lessened cost either for domestic consumption or for export. And that cold storage transportation facilities should be provided, at the cost of operation, for the shipment of food products throughout Canada and for the carrying to the markets of the world the surplus farm products of this country and delivering them in such condition that will make Canadian foodstuffs a standard of quality for the world's market.

That in the interests of agriculture, in aid of greater production on the land, and for the conservation of the soil in Canada, it is expedient for the Government to arrange for the distribution of fertilizers at the lowest possible cost.

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Resolution on Reciprocity.

That the Reciprocity Agreement negotiated with the United States by the Liberal Government of Canada, in 1911, was a measure which realized the hopes that had been entertained and efforts made for better trade relations between Canada and the neighbouring Republic, by the statesmen of both political parties in the Dominion, from the beginning of the Dominion's history.

That the Agreement was fair and just to both countries and well calculated to promote the good relations so desirable;

That the action of the Conservative party, under the leadership of Mr. (now Sir) Robert Borden in opposing and defeating the Agreement was a sacrifice of the best interests of Canada for distinctly partisan ends.

That the insincerity of the movement of the Conservative leaders on that question has been abundantly evidenced by the fact that, after coming into office, they proceeded to make some of the very tariff changes, a denunciation of which was their chief ground in the elections of 1911.

That the action of the Conservative leaders in preventing the consummation of so excellent an arrangement between the two countries deserves and should still receive, whenever the opportunity occurs, the severe condemnation of the Canadian people. . . .

Resolution on Financial Condition and Taxation.

Whereas the national safety demands that the serious financial position of the country should be known and appreciated in order that steps may be taken to cope with the same; and . . .

BE IT AND IT IS HEREBY RESOLVED:

1. That the serious nature of the country's financial situation calls for the profoundest consideration of all patriotic citizens, and the exercise of the severest economy by the Government;
 2. That increase of revenue must be sought from an equitable and effective imposition and collection of graduated taxes, on business profits and income, applicable to all incomes above reasonable exemptions;
 3. Taxes on luxuries.
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Resolution on Soldiers' Civil Re-Establishment.

1. Whereas it is considered that the guiding principle for a permanent settlement of the problem of civil re-establishment should be equitable treatment to soldiers in all avocations having regard to the length and nature of service;

RESOLVED that this Convention declares that the adoption of a

system of cash grants to the soldiers and dependants of those who have fallen is the most satisfactory and effective means of civil re-establishment—such grants to be in addition to the present gratuity and to any pension for disability resulting from service.

FURTHER RESOLVED THAT THIS CONVENTION FURTHER CONSIDERS:

2. That the whole matter of the education of the returned soldier be placed in the hands of competent educational authorities to provide for the co-ordination, improvement, and extension of a system of educational training, both vocational and general.

3. *Insurance.* That provision should be made whereby any increased cost of insurance in favour of the dependants of the soldier should be borne by the state where such increase arises from disability incurred during the War.

4. *Pensions.* (a) That such pensions or allowances be granted as shall enable soldiers or their dependants as the case may be to maintain a liberal standard of living sufficient to guarantee health, education, and all the necessities, comforts, and amenities which go to make up a standard of living worthy of Canadian citizenship.

(b) That soldiers permanently disabled should be trained for some useful occupation selected by themselves and for which they are fitted or can be fitted for such length of time as shall render them efficient in same and after being trained so should be assisted by the Government in obtaining employment at a rate of remuneration adequate to the services rendered in such employment.

Resolution on Railways and Development of Natural Resources.

Whereas the construction of the National Transcontinental Railway wholly upon Canadian soil including terminal facilities, and in the completion of the project[ed] steamship connexion with Europe and the Far East, thus affording the best possible transportation between the Orient and the mother country and opening up a large portion of Canada not before developed, and providing for lowering of the freight rates, was undertaken by the Liberal Government and Parliament of Canada;

The Government now owns and operates some 16,000 miles of railway. We believe that the present system of management by a Board, the majority of the members of which devote but a small portion of their time to this work, is unwieldy, inefficient, and extravagant, and that under it and the present administration public ownership and operation will not receive a fair trial.

Adequate facilities and tonnage for ocean traffic are a vital concern to the commerce of Canada and the utter lack of foresight on the part of the Government in neglecting to see that such facilities and tonnage

were provided for the immediate After-the-War period is not only humiliating to the Canadian people, but is materially impairing our export trade. . . .

This Convention declares its fullest confidence in the future of Canada, believing that a wise and economical development of our natural resources and a judicious and vigorous immigration and colonization policy, coupled with stringent economy and efficient management in every department of Government, will solve the transportation and other difficult problems now confronting the country.

Resolution on Control of Liquor Traffic.

Whereas the regulation, restriction, and prohibition of the sale of intoxicating liquors, within their several jurisdictions, are vested in the provinces, this Convention is firmly of the opinion that when, for the effective enforcement of restrictive or prohibitive legislation enacted by any province, supplemental federal legislation is, by the legislature of said provinces, deemed necessary, such legislation should, on the request of said legislature, be enacted by the federal Parliament.

Resolution on National Unity.

Recognizing that the crown of Sir Wilfrid Laurier's life work and the dearest wish of his heart was the establishment of racial concord and national unity throughout the Dominion, the Liberal party of Canada in National Convention assembled emphatically condemns all attempts to create racial discord and national disunion and would hold up as a lasting example to the Canadian people the inspiring ideal of that great Canadian—a united Canada in which all Canadians shall be on equal footing, all working together in harmony and concord for the upbuilding and aggrandizement of their common country.

Resolution on Control of Natural Resources by Provinces.

Resolved that the provinces of Manitoba, Saskatchewan, and Alberta should be granted the ownership and control of the natural resources within their respective boundaries on terms that are fair and equitable, with reference to all other provinces of the Dominion.

3. LABOUR PLATFORM, 1925

(*Labour's Case in Parliament*, pp. 7-8.)

(The following manifesto, issued by the Independent Labour party of Manitoba, has been endorsed by the Labour party in a majority of the provinces, and is, in effect, a national platform.)

The Independent Labour party of Manitoba is formed for the purpose of giving political expression to the aspirations of all workers,

regardless of industrial affiliation, who believe in the establishment of a Co-operative Commonwealth, with production for Use and not for Profit as its economic basis.

Pursuant to the above declaration we have in view a complete change in our present economic and social system. We recognize our oneness with workers the world over. In every problem which can confront the State we place 'Human Needs' above 'Property Rights'.

In applying the above, we advocate:

1. Regaining for the use of the people of this country the natural resources which have been so recklessly alienated by incompetent or venal administrations.

2. Public ownership and democratic operation of public utilities; and as soon as possible of essential large scale industry.

3. The nationalization of the banking system.

4. The establishment of a high standard of living with adequate provision for all forms of social insurance.

5. Re-employment—the recognition of the responsibility through federal, provincial, and municipal administrations, to provide suitable work for all at such remuneration as will ensure a decent standard of living. Failing the provision of such work, adequate maintenance.

6. Generous provision for returned soldiers and their dependants. Those men who risked their lives for the State, voluntarily or under conscription, are entitled at least to have their disabilities borne by the beneficiaries of the war.

7. Equal rights of citizenship irrespective of sex, class, origin, religion, or property qualifications.

8. Full restoration of civil liberties.

(a) The repeal of all legislation restricting freedom of speech, of the press, of assembly or of association.

(b) Repeal of the amendments to the Immigration Act which make possible the deportation, without ordinary judicial process or trial by jury, of persons not Canadians by birth or naturalization—including British subjects.

(c) Liberty for the workers to enjoy as unrestricted a right of association as is exercised by the 'Capitalistic Interests'.

(d) The right of Labour organizations to participate in political activities.

9. *Re* trade relations and immigration:

As free intercourse between nations as is consistent with the maintenance of a decent standard of living. We realize that the rival policies of the old parties (protection or free trade; free or restricted immigration) do not offer any real solution of our economic problems.

10. *Re* taxation:

(a) Abolition of fiscal legislation that fosters and sustains class privilege.

- (b) Removal of taxes from the necessities of life.
- (c) Taxation of land values.
- (d) After exemptions of small incomes a steeply graded income and inheritance tax.
- 11. A Capital Levy for the extinction of the war debt.
- 12. Proportional representation, with grouped Constituencies.
- 13. *Re Constitutional Amendments:*
 - (a) Abolition of the Senate.
 - (b) Legal as well as Constitutional Dominion Autonomy, with proper safeguards for Provincial Rights.
- 14. Opposition to all forms of militarism.
- (a) Abolition of Secret Commitments.
- (b) National disarmament.
- (c) The development of a Democratic League of Peoples.

4. CONSERVATIVE PLATFORM, 1927

(Montreal Gazette, October 12, 13, 1927.)

The following are the most important resolutions passed by the Conservative National Convention, 1927:

Resolution on the Tariff.

This Convention desires to record its feeling of pride in the growth, progress, and prosperity of Canada, under the historic fiscal policy of the Liberal-Conservative party. It affirms its adherence to the principles of that policy in its declared objects of stimulating the development of the natural resources of the Dominion; preserving and enlarging the market for Canadian farm products; building up the industries of Canada, and thus creating employment for our workmen; promoting inter-provincial trade, and generally providing a diversified economic life which will be effectual in retaining Canada's sons and daughters within our own boundaries. This Convention affirms the principle that from time to time, as changing conditions require, the customs tariff should be revised and its rates adjusted and brought into conformity with such conditions. In such revisions, regard should be had not only to the objects of fiscal policy herein enumerated, but to the welfare of the consumer, and it is desirable in the national interest that in such revisions the cost of living and the cost of the implements used in production of whatever nature should be given special and attentive study, with a view to the reduction of such costs to the extent practicable. This Convention affirms the policy first introduced by the Liberal-Conservative Government in 1912, that with a view of having tariff rates under scientific investigation, a permanent tariff commission should be appointed representative of the three great classes of Canadian industry—agriculture, labour, and manufacturing—entrusted with the duty of studying

tariff problems, and making such recommendations to the Government as it deems in the public interest with reasons therefor. Should it find that unfair advantage is being taken of tariff duties it shall make recommendations to be given effect to by the Government for reducing or removing tariff schedules or imposing special duties of excise upon products in respect of which such advantage has been taken, and its reports, findings, and reasons therefor shall be laid before Parliament and made known to the public. And this Convention expresses the view that while strong effort should be directed towards the establishment of a system of preferential tariffs throughout the Empire no preference should be given at the expense of the Canadian farmer or workman, and all such preference should be conditional upon the use of Canadian ports.

Resolution on Labour.

Resolved that this Convention accept and adopt as a part of the platform of the Liberal-Conservative party, the terms of the Labour Convention and general principles associated with it, which forms a part of the treaty of peace of 1919.

This Convention and these principles, adopted as they were on motion of Canada's then Prime Minister, accepted and subscribed to by representatives of Governments, of employers, and of labour from many countries of the world, form a fitting foundation upon which stability in industrial relations and progressive social legislation may securely rest.

And be it further resolved:

(A) That national peace and prosperity can be established only if founded on social justice.

(B) To promote industrial peace and human welfare is the duty of the state. To best accomplish this the following is adopted:

(1) Encouragement of the production of goods within Canada by Canadian labour.

(2) Conversion of our raw materials into finished goods at home rather than exporting them for manufacture abroad.

(3) Encourage especially industries that afford reasonable continuity of employment.

(4) That all possible aid be given capital and labour by encouraging both to promote co-operation, conciliation, and arbitration methods in adjusting controversies between these two important factors in the country's industrial life.

(5) By co-operation between Government, capital, and labour, extend the scope and use of public employment service, thereby reducing labour turnover and giving unemployed women access to wider employment opportunities.

(6) Encourage the prevention of employment of children under sixteen years of age.

(7) Make available to Canadian citizens and especially to returned soldiers any offers of assistance for land settlement that are extended to prospective immigrants from other countries.

(8) Consultation with representatives of both employers and employees on matters affecting them, and representation for both on federal boards or commissions dealing with matters directly affecting their interests.

(9) So far as is practicable, to support social legislation designed to conserve human life, health, and temperance, to relieve distress during periods of unemployment, sickness, and old age.

(10) To encourage uniformity in labour laws throughout Canada, and the wider spread of technical education both in industry and agriculture.

(11) That ample provision for the care of our war veterans, nursing sisters, and the widows and orphans of those who made the supreme sacrifice be restored and maintained.

Resolution on Immigration.

That Canada adopt an aggressive system of immigration based upon the selective principle and with that end in view efforts be directed to:

(1) Repatriation of Canadians.

(2) Securing a larger percentage of British settlers.

(3) Taking full advantage of the assistance tendered by the British Government to promote Empire settlement.

(4) Making arrangements between the two Governments to ensure proper training of the youth of the British Isles as agriculturists to better qualify them as Canadian settlers.

(5) That in the selection and settlement of immigrants a sane classification and distribution should be made, taking into consideration the immigrant's previous occupation and adaptability and that in such distribution the needs of all provinces should be given fullest consideration.

(6) That in selecting new immigrants, relatives of present citizens of Canada should receive favourable consideration.

(7) That special concessions be granted to Canadians to enable them to settle our vacant lands.

(8) That such races be excluded as are not capable of ready assimilation.

Resolution on Fuel Policy.

Whereas, the interchange of products by the different sections of the Dominion is essential to our people attaining the highest degree of self-dependence and prosperity;

And whereas, fuel is outstanding in its importance both to the industrial and family life, but its distribution is checked by natural

barriers between our thickly populated centre and our vast deposits of coal in our east and west;

And whereas, it has always been the policy of the Liberal-Conservative party to encourage home industries and the development of our natural resources;

Therefore, be it resolved:

That the Conservative party pledges itself to a national fuel policy and to that end Parliament instruct the Railway Commission to fix a fair rate as between the carriers on the one part and the industry and the consumer on the other; and to determine in addition a rate which will enable the coal industry to compete with imported coal; and that the deficit, if any, be recognized as a national burden and borne by the Dominion as a whole.

Resolution on Old Age Pensions.

Whereas all needy aged persons, wherever resident in Canada, qualified by residence have equal right to old age pensions; and

Whereas, the present federal pension law is inadequate and unworkable;

Therefore, be it resolved that pension legislation should be the subject of federal legislation only.

Resolution on Railway Policy.

Whereas, the Canadian Pacific Railway owes its existence to the courage and vision of Conservative statesmen;

And whereas, the amalgamation of the different units now comprising The Canadian National Railways were achieved by the Conservative party;

And whereas, it is in the best interests of our country that both railway systems should remain separate and apart;

Be it resolved, therefore, that the Conservative party pledges itself to maintain the Canadian National Railways as a publicly owned and operated utility and to make the directorate of that railway non-partisan and free from political interference.

Resolution on Soldiers' Civil Re-Establishment.

That the Conservative party pledges itself in the matter of legislation relative to ex-service men and their dependants.

(A) To an administration of existing legislation, sympathy with the known spirit of such legislation and in accord with the desire of the Canadian people and to that end that all essential amendments be made.

(B) For the amending of existing legislation providing for the allowing of appeals from the decisions of the B.P.C. and D.S.C.R., on the matter of assessment to the Federal Appeal Board as a competent independent tribunal with full power to act.

(C) That in the matter of employment in the Civil Service preference be given to ex-service men and women and that the existing law be rigidly enforced, and that appointments be not made on the ground of political expediency.

(D) That in the matter of pensions to the needy aged the minimum age to be reduced to sixty years. . . .

Resolution on the St. Lawrence Canal.

In regard to the St. Lawrence Canal, the following resolution was submitted:

Whereas the improvement of the Welland Canal system by the Canadian people is nearing completion.

This convention is of the opinion that the St. Lawrence Canal system as an all-Canadian project should be developed in the national interest and when conditions warrant.

When undertaking the sovereign rights of the respective provinces the development of power shall be protected.

Resolution re Freight Rates on Grain and Grain Products.

Resolved that we pledge our party to maintain the existing freight rates as a maxima on grain and grain products.

Resolution on Inter-provincial Highways.

Resolved that this convention favours the principle of federal aid for the construction of inter-provincial highways, and reaffirms the policy of the Conservative party in this respect.

Resolution on Hudson Bay Route.

Recognizing the aspirations of the people of Western Canada to find the most direct means by Canadian ports, by which the products of the west, primarily grain, livestock and farm products, can be carried to the markets of the world, we pledge ourselves to the completion of the Hudson Bay Railway to the Bay at once, and provide such terminal and harbour facilities as are adequate for the operation of the route.

Resolution on Peace River District.

Resolved that this Convention favours the construction as soon as possible of a Pacific coast outlet from the Peace River district by the most advantageous route.

Resolution on use of Canadian Ports.

This Convention reaffirms the policy of the Conservative party to promote, by every effective means, the passage through Canadian ports of the products of Canada, and imports for the consumption of its people.

Resolution on Imperial Relations.

This Convention reaffirms the traditional adherence of the Liberal-Conservative Party to the principle of loyalty to the Crown and to the maintenance of that integral connexion of Canada with the British Empire, which is based upon full concurrence of the Canadian people. This Convention further expresses its satisfaction at the position attained by Canada as a nation within the British Empire, which was acknowledged at the close of the Great War by our participation in the Imperial Conference and Canada's signature affixed to the Treaty of Versailles, and also by Canada's admission with full status to the League of Nations. The Convention emphasizes the fact that the attainment of this position, which has been the result of the practical applications made by the leaders of the Conservative party of the principles laid down by that party, which was founded in the struggle for confederation, and has continuously stood for the unity and equality of all Canadians and for the material, moral, and spiritual development of Canada. This Convention rejoices in the powers and freedom of action which Canada as a nation has attained largely through the efforts and sacrifices of our soldiers, and pledges itself anew to the ideal of a united Canada. This Convention emphasizes the fact that the Conservative Convention cherishes the traditions and purposes of the British family of nations, and believes that in the co-operation of the British nations will be found good for Canada and for the world.

Resolution on the Maritime Provinces.

Whereas the Duncan Commission created by the Dominion Government was given wide powers for the purpose of investigating the grievances of the Maritime Provinces of Canada and which commission as a result of such investigation made certain recommendations, many of which have not been implemented by necessary legislation;

Be it, therefore, resolved that this national convention of the Liberal-Conservative party approve and pledge itself, when returned to power, to the enactment of all such legislation as may be necessary to fully implement each and every recommendation made by the said Commission.

Resolution on the Natural Resources of Western Canada.

That, in the best interests of confederation and the economic development of Western Canada, the provinces of Manitoba, Saskatchewan, and Alberta should be granted their natural resources free from restrictions within the legislative competence of the Parliament of Canada, but in compliance with the letter and spirit of the constitution, and that the claims of these provinces to compensation for loss for lands and resources alienated and the claims of any

other provinces in connexion with this subject should be investigated with a view to satisfactory and equitable adjustment. . . .

Resolution on Mining.

That this Convention believes that for the proper development of the mining industry of Canada there should be co-operation to a greater degree between our federal and provincial Governments, that there be established a federal mineralogical department under the direction of a Minister of Mines in which there should be facilities for a central geological department with laboratory and technical staff available to the provinces, and that scientific research should be prosecuted to the utmost in the matter of our mining industry.

Resolution on Fisheries.

Whereas, the fishing industry is of primary importance to our Canadian economic system and, whereas, this industry is not being developed up to its possibilities owing to the lack of departmental attention;

Be it resolved that the Liberal-Conservative party endorses a policy of developing this industry to its fullest capacity and of taking measures to safeguard the lives employed therein.

Resolution on Agriculture.

That this convention recognizes agriculture as the basic industry of Canada and it pledges the Liberal-Conservative party to encourage the development of agriculture by promoting by legislation and otherwise a greater interest in agriculture and securing a greater degree of contentment and prosperity for those dependent upon it, and, in particular, this party believes that by the scientific investigation of agricultural problems, the Government should prosecute every possible effort to advance the interests of this great industry.

And further, this convention is of the opinion that the Government of Canada should co-operate with any and every agency which exists where such co-operation will further the greatest industry of our country.

Resolution on Party Policy.

The Liberal-Conservative party, whose founders brought about Confederation, and cemented its provinces into an harmonious political whole, based upon common interests, common ideas, and mutual respect and affection of all its elements, stands everlastingly

pledged to a policy which will at all times bring prosperity, contentment, and peace to all its citizens irrespective of boundaries and origins.

B. THE LACK OF DISTINGUISHING FEATURES IN CANADIAN
POLITICAL PARTIES

I. 'PARTY CONSISTENCY'

(Sir John Willison in *Canadian Magazine*, April, 1922, pp. 532-3.)

There is virtue in political consistency, and devotion to party is not necessarily ignoble. But no man in Canada has been more inconsistent than the man who has faithfully followed either political party for a generation. It was by a sheer chance of the cards that the Liberals were not protectionists and the Conservatives a low tariff party. From 1878 to 1896 Conservatives maintained and Liberals opposed a protectionist system. From 1896 to 1911 there was no substantial reduction in the scale of tariff duties. It is true that the British preference was established but duties under the preference were increased to give more adequate protection to Canadian industries. Again, it was almost by a sheer chance of the cards that the Conservatives opposed ratification of the trade agreement with the United States which was negotiated by the Laurier Government and the Taft Administration at Washington. In 1896 the Liberal party under Laurier opposed federal interference with the legislation of Manitoba which abolished Catholic separate schools. In 1905 the Liberal party under Laurier recognized and established Catholic schools in Alberta and Saskatchewan while the Conservative party reversed its position and opposed any federal guarantee of separate schools for the new provinces. Again a Liberal Government established federal control over the natural resources of the Western provinces and the Conservative party opposed the legislation. But for eleven years the Borden Government, despite definite pledges, failed to restore the resources of the provinces and now what was done by a Liberal Government seems likely to be undone by a Liberal Government. The Liberal administrations of the three Prairie provinces are united in the demand for restoration of their resources although all supported the legislation by which they were withheld. From 1878 until 1896 the Liberal leaders demanded reform or abolition of the Senate. In the Halifax platform of the Conservative party appeared the old Liberal protest against the unrepresentative Chamber. But during the long period of Liberal government under Sir Wilfrid Laurier not a single Conservative found his way into the Senate. While Borden held office its doors were closed as securely against Liberals. The Senate still lives and is still unreformed. A few years ago the Grain Growers threatened to destroy the Upper Chamber, but when there seemed to be some prospect that they would obtain

office at Ottawa they substituted reform for abolition. Perhaps the Senate, so often threatened, is as secure against governments as any institution which the fathers established. Many other like instances of inconsistency can be found in the history of the Canadian parties, but nothing more is needed to illustrate the facility of those who boast that they have ever been faithful to one 'grand old party' or the other to turn their coats with every change of weather as the exigencies of party may require.

When they asked the Indian if he was lost he said, 'No, wigwam lost'. In this country, as in other countries, the political parties have had no stationary wigwam and thousands of their adherents have lost the habitation in which they loved to dwell because again and again it was moved to far and strange places in the wilderness. There is nothing in Canadian politics so juvenile as the babble of politicians and their adherents about 'consistency' when they should know that if they had to retrace their steps mile by mile they would die on the first stage of the journey from sheer mental surprise and physical exhaustion. . . .

2. 'O CANADA'

(Frank H. Underhill in *Canadian Forum*, March, 1929, p. 199.)

. . . It is obvious that, on the whole, our machinery for carrying on government by an executive which depends for office on keeping a majority in the legislature works more smoothly when the legislature consists of only two parties. And third parties have not thrived in Canada. But this truism, which affords such spiritual comfort to the orthodox, has the bad effect, when repeated too often, of blinding us to the actual composition of the two parties in question. For our Canadian parties have never been the highly centralized, closely-knit organisms of England. Canada, like the United States, is too wide in extent and its national unity is still too imperfect to allow of the existence of such parties as the English Liberals and Conservatives, each with a coherent theoretical philosophy and a definite practical policy. On this continent the national parties are really loose federations of local provincial or state machines held together chiefly by a common desire to share in the pork barrel. It is in the structure of our parties that the most important federal element of our constitution appears. 'To-day', writes Prof. W. B. Munro commenting on the recent American election, 'a party is nothing but a bundle of factions held together by the elastic bond of a common nomenclature.' He might have made the same remark about Canada.

Illustrations of the truth of this simply crowd upon one. Consider the party platforms so skilfully drafted to appeal to all sections of the country and so subtly non-committal on every controversial issue. Consider the history of the tariff question. Every one now knows that

the change of government in 1896 from 'Conservative' to 'Liberal' made no real difference in tariff policy. Every one knows that the present 'Liberal' party will not reduce the tariff appreciably because the eastern sections of the party are too strong. Every one knows that, when and if the Conservative party comes into power, it will not appreciably raise the tariff because of the influence of its western members. The real struggle about the tariff, and it is a real struggle, is not between the parties at all but between different sections within the same party. It was the same on the question of public ownership of railways. It will be the same on the question of the St. Lawrence waterway. On every issue of importance in this country it is safe to say of the English-speaking part of Canada that a man's opinions are not determined by the party for which he shouts but by the geographical section of the Dominion in which he lives, and by the economic and social class to which he belongs. Our two national parties are simply national clearing houses in which differing sectional and economic interests negotiate such practicable compromises and bargains as appear likely to bring them closer to the enjoyment of office.

This being so, the only practical difference caused by the emergence of groups and third parties is that the bargaining process has to take place more or less in the open. In the good old days in Canada when the two-party system reigned supreme the bargaining was all done in the privacy of the party caucus. In 1926 the righteous were shocked by seeing it done actually on the floor of the House of Commons as the party leaders bid frankly for Western Progressive or U.F.A. votes. No doubt a good deal of bidding was done behind the scenes also. But the essential process of bargaining among sectional interests was exactly what it had always been. The Westerners on this occasion did fairly well for themselves. They got the Hudson's Bay Railway, they saved most of the Crow's Nest rate structure, and they even got a few tariff reductions. And any one who imagines that a party dominated by sixty votes from Quebec would have given them this much had they remained proper and meek members of the party caucus is simply too good for this world. The Progressives after their period of insurgency seem now to be returning to the Liberal fold. But their revolt has achieved for the time a much healthier balancing of sectional interests in this country, and its effects can easily be observed in both parties. If the people of the Maritimes would follow their example for five or ten years the healthiness of the balance would be still further increased. For without these periodical revolts our parties tend to fall into the hands of the particular interests which are best organized, i.e. the interests centering in Toronto and Montreal. And the other sections of the country can then bargain only on very disadvantageous terms. This simple, practical consideration explains why all the highly respectable people in Toronto and Montreal are profound believers in the two-party system.

3. THE INCOHERENCE OF CANADIAN POLITICAL PARTIES

(John A. Stevenson in *Queen's Quarterly*, Spring, 1929, p. 361.)

. . . The cold truth is that a certain bewildering incoherence persists in the ideals and policies of both our historic parties. The Liberals favour a robust political nationalism and profess a disposition to reject the economic nationalism embodied in the protectionist creed. The Conservatives on their part pour scorn upon political nationalism but are zealous devotees of the economic brand of nationalism. Now political nationalism and economic nationalism, if not full sisters are, certainly, cousins in close degree because the genuine nationalist must desire his country to attain that economic self-sufficiency which only a high tariff can ensure and, conversely, the full-blooded protectionist must view all Imperial entanglements as an obstacle to his aspirations. Hence it follows that the only politicians at Ottawa who follow a consistent creed are such French-Canadian Liberals as believe in both nationalism and high protectionism and such Progressives as advocate a policy of Imperial co-operation with free trade between the British countries as one of its bases. Between these two extremes lies a strange welter of muddled political thinking, commingled with not a little hypocrisy, and there will always be a certain unreality in our politics until we have one party committed to a full-blown protectionist nationalism and a rival battling for a policy of Imperial co-operation which predicates at least a very low standard of protectionism.

II

THE NATIONAL LEADER OF A PARTY

A. THE SELECTION OF A PARTY LEADER¹

I. ELECTION OF MR. R. L. BORDEN AS LEADER OF THE CONSERVATIVE PARTY, 1901

(*Montreal Gazette*, February 6, 7, 1901.)

Ottawa, February 5. The Conservative party meeting which assembled in the Railway Committee room of the House of Commons to-night was a large and fairly representative one. Mr. W. R. Brock, Centre Toronto, occupied the chair. There were over seventy members present, including a good number of senators. Though the meeting was harmoniously conducted, there was a considerable divergence of opinion on the question of leadership. Questions of policy

¹ Inasmuch as the Conservative party has done more experimenting in choosing a national leader, the illustrations have been chosen entirely from the history of that party.

were not discussed at all. There was a suggestion to hold a convention in the near future, and it was decided that should such a convention take place, these questions would then be taken up. Those present differed as to whether a leader would be chosen for the party, or whether a temporizing policy should be followed, and a leader chosen simply for the coming session. The favourers of the latter procedure were in the majority; but it was not thought well to decide definitely until a fuller expression of opinion could be ascertained. At eleven o'clock the meeting adjourned till to-morrow night, when the matter will be settled.

Before the discussion of leadership took place, Mr. Taylor read the valedictory of Sir Charles Tupper, and the following committee was, on motion of Mr. Sproule, appointed to draft a reply. . . .

Ottawa, February 6. The Conservative caucus met again to-night in fuller conclave and after some time taken in deliberation the unanimous decision was arrived at that Mr. R. L. Borden, of Halifax, should represent the party in Parliament as its leader. Mr. Borden is not merely the unanimous choice of the party, but he has an absolutely free hand to do whatever he pleases. Questions of policy have not been broached, and the rumours of a convention, which were heard previously to this evening, are completely obliterated. The fortunes of the Conservatives have been entrusted completely and unreservedly to Mr. Borden, just as they were to Sir Charles Tupper in the past. The opinion of the Conservatives, who were present in large numbers at the meeting this evening, was that it would be better to choose a man and let him lead unconditionally, rather than pursue a temporizing policy and appoint simply a sessional leader. The fact that there was not a single dissenting voice to the nomination of the present leader augurs well for the future harmony and effectiveness of the Opposition. There was no other name brought up in the caucus, and consequently no bitterness whatever was aroused and no jealousy enkindled. It was decided to hold in the near future a banquet in honour of the newly chosen chief. . . .

2. SELECTION OF HON. ARTHUR MEIGHEN AS LEADER AND PRIME MINISTER, 1920

(a) *The plan adopted by caucus*

(*Montreal Gazette*, July 2, 1920.)

Ottawa, July 1. This, the fifty-third anniversary of Dominion Day, was marked by the prorogation of an important session of Parliament, and made still more eventful by the retirement of Sir Robert Borden as leader of the Unionist party, preliminary to his resignation as Prime Minister of Canada.

Sir Robert made the announcement to his followers in the Senate

and Commons at a caucus of the Unionist party that met at 10.30 o'clock, sat till 1, resumed at 4.30 and sat up to 7 o'clock. The caucus then adjourned, leaving to Sir Robert the final decision as to his successor in the leadership of his party and the premiership of Canada.

It was a meeting that was suffused with loyalty to and appreciation of the great public services and devotion of the retiring leader. The caucus voiced the determination of both the Liberals and Conservatives in the Unionist party to continue united, and to present themselves under a new leader, yet to be selected, prepared to carry on the Government, to start a Dominion-wide campaign to uphold the platform that the caucus approved, and to be increasing in their propaganda until an appeal to the people could be made in 1921 or 1922. Sir Robert Borden's assurance to his followers that they were never so strong as they are to-day was greeted with rounds of applause....

Another feature of the caucus was the adoption of a new name, 'the National Liberal and Conservative party'. The word Unionist, it was thought, might be objectionable in Quebec.

Some of those who attended the caucus say it was a remarkable one. Sir Robert Borden, in telling his supporters that his break-down in health had forced him to take the step of resignation, spoke slowly and feelingly, in a firm but restrained voice. He evoked a great burst of enthusiasm when he said he would remain with them by keeping his seat in Parliament, but he spoke so directly in saying that he must give up office that every one of his hearers was compelled to acquiesce reluctantly in his decision. Then they cheered him again.

What of the new leader? It was decided that each member of the caucus was to write forthwith to Sir Robert Borden a letter naming his first, second, and third choice for leader, and giving any other suggestion he had to offer in that respect. Absent members of the caucus will also be asked to send in their choices. In a few days, on the advice of his followers and after consulting his colleagues in the Cabinet, Sir Robert will recommend his successor to the Governor-General. The selection of the new leader is, therefore, in Sir Robert Borden's hands, though he will be guided largely by the suggestions of his followers and colleagues.

Who, then, will it be? A few days will tell, but the Cabinet members will have much to say. It is believed that they are in favour first of Sir George Foster, but Hon. Arthur Meighen may get so many votes in the letters sent to Sir Robert that the prize may go to the active and aggressive Minister of the Interior. Sir Harry Drayton is also mentioned, and some prominent Montreal men are said to favour his name. Mr. Meighen at present does not seem to be the choice of his colleagues, although the sentiment of the private members appeared to lean towards him.

(b) *The Consultation.*

((1) *Montreal Gazette*, July 3, 5, 1920.)

July 3. The National Liberal and Conservative leadership will not be decided for a week and probably longer. About half the members have written their views to the Prime Minister, but all the letters expected on this subject will not be received before the middle of next week. In the meantime, and afterwards, the Prime Minister will consult prominent Canadians outside of Parliament on the leadership question.

The letters from Commoners and Senators to the Prime Minister are confidential and will so remain, so that only the indication of the trend of the sentiment is to be secured from the members remaining here. It is generally conceded that Hon. Arthur Meighen will be first choice on the majority of the letter ballots forwarded to the Prime Minister. During the past week there has been a strong swing to the Minister of the Interior, especially among the Ontario Unionists. It is estimated that he will secure the support of a majority of the Liberals on the Government side, while among Conservatives he will have a great following. Conservatives from the West and Maritime provinces are solidly behind him and his Ontario following has greatly increased.

This strong support does not necessarily mean that he will be leader, as the Prime Minister will be guided by other considerations besides that of the popularity of a Minister in Parliament. For a week at least the people must await the name of the new Prime Minister. . . .

July 5. Owing to a change in political conditions, it is quite probable that the name of the successor to Sir Robert Borden will be announced sooner than expected. The announcement may now be expected Thursday, and perhaps a day earlier. It is conceded that Hon. Arthur Meighen has made practically a clean sweep in the polling. His support is placed at not less than eighty per cent, and some say as high as ninety per cent. There can be little doubt, unless some unforeseen contingency arises, that he will be named as successor to Sir Robert Borden.

Sir Henry Drayton has received a fair measure of support, chiefly from Montreal. Like Hon. Arthur Meighen, he has not been active in the contest, but has been made a competitor by friends and admirers. The position of the various Ministers is becoming more clearly defined. Sir Henry Drayton was made a candidate without his consent. Sir George Foster has many staunch friends who would like to see him Prime Minister, but it is known that Sir George has intimated that under no circumstances would he assume the task, but that if desired, he would give of his best in support of the new leader. . . .

((2) *Manitoba Free Press*, July 5, 1920.)

Some Government members have left Ottawa for their homes, content to allow events to take whatever course they will and realizing that, having made their recommendation to the Premier as to the choice of his successor, they can do nothing more. Others prefer to stay and see this thing through. Included among these are the more pronounced partisans of the various contestants for the position; included also are the personally ambitious who look to figure in Cabinet reconstructions as members of the new Government. Then there is the 'sporting' element who find in the situation all the zest and interest of a good horse race, with the odds shifting and varying every hour of the day. These latter always have 'the dope' whenever approached, but 'the dope' changes from time to time in the most bewildering manner and few bets are being taken or offered.

It is probably a mistake to speak of 'contestants'. A better word is 'nominee'. For there is really only one actual apparent 'contestant', and that is Hon. Arthur Meighen. Mr. Meighen is frankly and openly out for the position and will take it whether it places him in the premiership for a day, a week, or a year, content thereafter even if he and his party are relegated to the cold shades of opposition. For Mr. Meighen is a young man and can afford to wait. He is also of the type of which good opposition leaders are made.

The others, from what can be gathered by their attitude, are not contestants, by their partisans they are having leadership thrust upon them. It is not evident here that Sir Henry Drayton, for instance, is himself actively on the canvass. Sir Henry perhaps realizes that it is better that others do it for him. He has many friends in the Rideau Club who are busy and evidences are not lacking that, if Sir Thomas White continues to refuse, his (Mr. Meighen) partisans will multiply to a remarkable extent. The partisans of Mr. Meighen are the politicians of the house, former Conservatives for the most part. The partisans of Sir Henry Drayton are men interested in politics as they affect commerce and finance. The influence of the latter may be greater than that of the former.

Sir Thomas White has so far remained coy to all wooings, and has given no outward evidence that he desires the position. On the contrary, he has on several occasions declared that he does not. That perhaps may be the best way he could go about securing it. In any case, his partisans (and they are many) have not yet decided to take 'no' for an answer and hope to beat down his opposition, if opposition it actually be.

In the meantime, no man can fathom the mind of James Calder. His partisans are limited as the number of the Liberal Unionists are limited, and he is wise enough to appreciate the handicap and to refrain from courting a rebuff by being a candidate and afterwards suffering defeat.

While it is to be presumed that Government members will abide by the choice made by Sir Robert Borden, that fact will not preclude the possibility of a good deal of bitterness among the advocates of those who are rejected. This will be particularly the case among the partisans of Mr. Meighen if he is rejected and Sir Henry Drayton is accepted. Sir Henry is a new man who has yet borne but little of the brunt of political strife. There will be bitterness but to a less degree if Sir Thomas is taken. . . .

(c) *Resulting Confusion.*

(*Montreal Gazette*, July 6, 7, 1920.)

July 6. At a late hour to-night there was no change in the political situation. Sir Thomas White is expected to-morrow, while Arthur Meighen has been in the city all day. Hon. N. W. Rowell is expected to arrive back from Toronto early to-morrow, and it is said he will make an announcement regarding his position. A remarkable feature of the present situation is the entire absence of old-time politicians, the various well-known rendezvous being practically deserted.

It is announced in official circles that 'all statements appearing in the press with respect to the nature of the result of the opinions conveyed to the Prime Minister by members of Parliament respecting the choice of his successor are wholly conjectural and therefore inaccurate. The documents in question are of an entirely confidential nature, and their contents will not be disclosed to any person, not even to any of the colleagues of the Prime Minister.'

The attention of Sir Robert Borden has been directed to certain statements in the press which allege or imply that certain of his colleagues have not been loyal to him during the past few years. The Prime Minister desires to assert most emphatically that all such reflections upon any of his colleagues are absolutely without foundation. From first to last every one of his colleagues has been thoroughly loyal to the Prime Minister on every occasion in every way. He feels himself under a deep debt of gratitude to each of them.

Letters and telegrams continue to pour into the office of the Prime Minister. To-day more communications were received from the parliamentary supporters of the Government suggesting a successor to Sir Robert Borden. There is still gossip of the possibility of an outsider being called in, although it is unquestioned that Hon. Arthur Meighen has the majority support of members of the new party in both Houses of Parliament. In some quarters, his following among Government supporters in Parliament is placed as high as ninety per cent. To-day there is a recurrence of the suggestion that Sir George Foster may be called in to form a temporary Government.

The constitutional position of a retiring Prime Minister is set forth in an official statement issued to-day.

Much confusion and misunderstanding [says the statement] seem to prevail in the press regarding the power and responsibility of a retiring Prime Minister in respect to the selection of his successor.

The selection of a new Prime Minister is one of the few personal acts which, under the British constitution, a sovereign (in Canada the representative of the sovereign) is required to perform. A retiring Prime Minister has no right whatever to name his successor, nor has he any responsibility with respect to the selection of his successor, except as follows:

The sovereign or his representative may not see fit to ask the view of the retiring Prime Minister with respect to the selection of his successor. For example, the Queen, on the final retirement of Mr. Gladstone, did not ask his advice or his views on that question. In such a case, the retiring Prime Minister has no right whatever to express his views or to tender any advice on the subject. If, however, the sovereign or his representative asks the views of the retiring Prime Minister, he has a right to express them, but they need not necessarily be followed. In expressing such views, he does not tender advice as a Prime Minister, because he has already retired from office. His advice is to be regarded simply as that of a person holding the position of Privy Councillor, who has acquired a wide experience in public affairs which would give a certain value to his opinion on the subject.

July 7. Sir Thomas White definitely stated to-night that he could not accept the leadership of the Government, even if it should be offered to him. He arrived here (Toronto) this evening from Muskoka, and is on his way to Ottawa, whither he has been called as Privy Councillor and a member of Parliament to confer on the political situation.

To a representative of the Canadian Press, he repeated the statement which he has made on several previous occasions, that he was not a candidate for any office in the Government, and that his name was not available for consideration. He said that he retired from the Government a year ago on two grounds, first, that his health had been seriously impaired by the continued strain of his official duties, and, second, because of the pressing necessity of rehabilitating his private affairs which during his period of office he had been obliged to neglect wholly.

He would not allow business or financial considerations to stand in the way of public duty, but with the matter of health it was different, as the public interest itself was there involved. It is clear that Sir Thomas does not regard himself as physically fit to undertake the heavy duties and responsibilities of the Premiership, even if the post had been offered to him, which he made very plain was not the case.

• Sir Thomas added that he was confident that an acceptable leader

would be found within the personnel of the present Cabinet, and he will be prepared to support the new leader loyally.

The capital has been rife with rumours to-day over the leadership. Sir Thomas White's statement has cleared the atmosphere somewhat, but the situation is rapidly becoming chaotic, and without an immediate decision it will be impossible for any one to form a new administration. The vote by letter by the members is now recognized as being farcical in the extreme, and their opinion plays little part in the selection of the successor to Sir Robert Borden. It is known also that several members of the Cabinet have not been consulted. Outside influence will be the chief factor in the decision. . . .

It is now very doubtful who will be leader. Of those available, some are strong with the party, but weak with the Cabinet. Any who have the support of the Cabinet cannot secure the support of the party. The problem may be solved, but to-day there is a growing feeling that only an election will meet the situation.

It was reported that Sir Robert Borden would make known his decision to-morrow, but in view of Sir Thomas White's statement this now seems impossible.

(d) *The Selection of the Leader.*

((1) *Montreal Gazette*, July 8, 1920.)

Hon. Arthur Meighen is Sir Robert Borden's successor. He is the youngest man who has ever held the Prime Ministership, and also the first Westerner called to this high honour. Sir Robert Borden notified Hon. Mr. Meighen to-day that he proposed submitting his name to His Excellency the Governor-General as the proper person to form an administration. To-night Hon. Mr. Meighen accepted the task, and in a few days will submit his Cabinet to His Excellency. Sir Robert Borden's formal resignation takes effect Saturday, and the new leader will announce his Cabinet shortly afterwards.

It has been a day of intense interest here. The arrival of Sir Thomas White, even though he had given an emphatic refusal to the attempt to have him reconsider his determination not to accept the leadership, added to the interest and the conjectures. Sir Thomas made it clearly known that he was out of public life, and strongly recommended Hon. Arthur Meighen as Sir Robert Borden's successor. There has always been the most friendly relations between Sir Thomas and Hon. Mr. Meighen. It is known that the new Prime Minister was willing to serve under Sir Thomas White if the latter accepted the leadership, and it is also known that Sir Thomas paid strong tribute to-day to the new leader's ability and service, and urged on the Cabinet that they give him a loyal support.

On Sir Thomas White's arrival, he went into conference with the

Prime Minister and some members of the Cabinet. He strongly urged that they present Hon. Arthur Meighen's name to the Governor-General to form the new administration. His wishes prevailed, and Sir Robert Borden sent for the Minister of the Interior. Hon. Mr. Meighen asked for a few hours to consult his colleagues, and at 10 o'clock to-night accepted the task. . . .

The resignation of Sir Robert Borden as Prime Minister will take effect on Saturday. He will be succeeded by Hon. Arthur Meighen, Minister of the Interior, who has undertaken the formation of a new administration. Official announcement to this effect was issued from Government House at 11 o'clock to-night. The announcement reads:

The formal resignation of Sir Robert Borden will be tendered to His Excellency the Governor-General on Saturday next, the tenth instant, and will be accepted by His Excellency with great regret. His Excellency has entrusted to the Honourable Arthur Meighen, Minister of the Interior, the formation of a new administration, and Mr. Meighen has undertaken that duty.

((2) *The Round Table* (Macmillan, London), September, 1920, pp. 877-8.)

. . . It may be said that Mr. Meighen was not the first choice of the Unionists for the Premiership, but there are reasons why Sir Thomas White was peculiarly acceptable in the existing situation in Canada. There were formidable influences in Quebec which sought to effect a coalition between White and Sir Lomer Gouin. Although Gouin is a Liberal he is also a protectionist, and White was a Liberal before he entered the Borden Government. Moreover, Meighen was regarded as a stronger partisan than White and was less acceptable to the Liberal Unionists in the Cabinet. There is reason to think that Mr. Rowell would have remained in the Government if White could have been induced to accept the Premiership. Indeed the Cabinet was united for White in the conviction that he would bring a greater measure of Liberal support to the Coalition and have the active sympathy of powerful interests in Montreal which were not very friendly to Borden and regarded Meighen as too faithful to the Borden tradition. Again and again in Parliament Mr. Meighen was chief counsel for the Borden Government. He was its most effective spokesman in defence of the Naval Aid Bill, the Military Service Act, the War Franchise Act, and the purchase of the Grand Trunk Railway, and none of these measures was popular in Quebec. They all had White's unequivocal support, but since he gave his attention peculiarly to finance he was less involved in successive parliamentary struggles than Meighen and perhaps less aggressive in general defence of the Borden régime. All possible pressure was exerted to induce White to take the Premiership. Even the Duke of Devonshire at Borden's request made a personal appeal to White to undertake the formation

of a Government. But he was immovable in his determination to remain out of office, and while he will hold his seat until the present Parliament is dissolved it is doubtful if he will be a candidate in the next general election. . . .

3. ELECTION OF HON. HUGH GUTHRIE AS THE CONSERVATIVE HOUSE LEADER, 1926, AND THE DECISION TO HOLD A NATIONAL CONVENTION

(a) *The Conservative Leadership.*

(*Toronto Mail and Empire*, October 6, 9, 1926 (editorial).)

October 6. We agree that it is not in the interest of the Conservative party or of the country as a whole that any one should appear to have the refusal of the Conservative leadership. What has been said on that point ought to be a sufficient word to the wise to prevent the announcing of an authoritative choice before it is known whether or not the man selected would meet it with a refusal. Various Conservatives have been named for the position, but only by the voice of rumour. No one has had the refusal of the leadership, because there is no one competent to offer it until the Conservative party has, through an all-Canada convention, come to a decision on the matter. A convention cannot be brought about in the twinkling of an eye. A basis of representation must be arranged for, each local area must select its delegates, the cost of the national meeting of the party must be provided for, and the business of the convention itself must be deliberated and dispatched. The vote for a leader will then be possible. How many Liberals were suggested for the succession to Sir Wilfrid Laurier as the head of his party? Mr. W. S. Fielding and Mr. George P. Graham were both strong candidates, but their supporters were outvoted by the supporters of Mr. King, upon whom the choice of the Liberal Convention of August, 1919, fell. There can be no peddling of the leadership of the Conservative party by anybody. It is not in the gift of any coterie. The caucus of Conservative Senators, Conservative members-elect, and Conservative defeated candidates, which is to be held on Monday next, may agree upon some one to lead in the House in the next session and until an organic body of the party, constituted for the purpose, appoints a permanent leader.

October 9. The Conservative party owes it to the country to put itself on the best footing possible to bring its policies into effect. That cannot be done at once. What will be done by the caucus at Ottawa next week cannot be regarded as even a beginning of the task of preparing the party for the work that is to its hand. The caucus meets for the purpose of attending to the purely parliamentary business of selecting a temporary leader in the House of Commons. The caucus is not authorized to concern itself with any other business of

the party. A new party structure, built up out of the rank and file of Canadian Conservatives, must be formed, a national convention must be elected therefrom to re-state with fresh authority the principles of the party, and a council made up of some of the most sagacious and trusted Conservatives must be appointed to keep in touch with the parliamentary representatives of Conservatism. A national convention thus formed and thus performing will be costly, but the party has hosts of loyal members willing and able to spare something for the promotion of its ideas, conducive as these are to the welfare of Canada. A national convention would have at least the stimulus of a new start. The National Liberal Convention of 1919 did much resolving, but the effect of its labours was small in comparison with the reviving effect of the mere coming together of the party clans. The Union Government almost wiped out the Liberal party, and something had to be done to bring the party to life. The Convention of August, 1919, proved to be the pulmotor required. The Union Government left the Conservative party in a very damaged state. A properly constituted convention of hard-headed delegates who refuse to be dominated by wire-pullers or springers of unexpected resolutions will give the Conservative party the invigorating new impulse it needs.

(b) *Action of the Conservative Conference and Caucus.*

(*Toronto Mail and Empire*, October 12, 1926.)

The Conservative Conference to-day accepted the resignation of Rt. Hon. Arthur Meighen as leader, appointed a committee to convene a national convention to select his successor, and the members-elect present chose Hon. Hugh Guthrie as House leader for the coming session. . . .

It was a very representative gathering under the circumstances, considering the party had just lost office, and that victory, felt assured, had been denied, that over 200 of a possible representation of 240 came to Ottawa. Even the Far West sent many representatives and from Saskatchewan, where Conservatism was thought to be dormant, came seven representatives who assured the Conference, though defeated, they were undismayed. All the former Ministers were present.

There is no doubt the sentiment of the Conference favoured the selection of a permanent leader by a national convention. There were, however, some, and these were of considerable influence, who sought to avoid such a gathering, but their efforts were futile in face of the strong demand that a national leader must have the endorsement of a national convention. It was almost unanimously agreed that the House leader should be selected by the members-elect, and this was done.

* . . . Those nominated for the House leadership were Sir George

Perley, Hon. R. B. Bennett, Hon. Dr. Tolmie, Hon. H. H. Stevens, Hon. Dr. Manion, Hon. Hugh Guthrie, C. H. Cahan, and C. W. Bell By retirement and elimination, the choice narrowed to Hon. H. H. Stevens, Hon. R. J. Manion, and Hon. Hugh Guthrie, and the last won.

. . . A committee was appointed to arrange a national convention. From the several provinces the representatives on this committee are—British Columbia, Hon. H. H. Stevens; Alberta, Hon. R. B. Bennett; Saskatchewan, Senator Gillies; Manitoba, Hon. Robert Rogers; Ontario, W. A. Boys; Quebec, Senator Beaubien; New Brunswick, Dr. Murray MacLaren; Nova Scotia, Hon. W. A. Black; Prince Edward Island, Hon. J. A. Macdonald. This committee will hold their first meeting here to-morrow, and will commence organization for the convention when Parliament opens in December. It is believed the convention will be called for June, and that it will be held either in Winnipeg or Toronto. The West is making a strong bid for the national convention.

October 12 (editorial). At the meeting of the Conservative members-elect of the House of Commons, the Conservative defeated candidates and the Conservative Senators, the one item of business to be disposed of was the resignation of the party's leader. Though there was outside speculation as to additional possible proceedings, there was always doubt as to the competence of a meeting so constituted to deal with other matters. It had no warrant to fill the place vacated by the leader's resignation. It had no authority to call a convention to choose a leader or transact any other business of the national party. Nor did it pertain to such a meeting to name a temporary chief for the sole purpose of heading the Conservative Opposition in the next session of the House. A temporary parliamentary chief was indeed agreed upon, not by this meeting, but by a caucus of the elected members exclusively. Mr. Meighen's resignation as party leader was accepted by the meeting of successful and unsuccessful Conservative candidates and Conservative Senators, and Hon. Hugh Guthrie was chosen as temporary House leader by a caucus of elected members. The nearness of the first session of the new Parliament—a date early in December being now mentioned—rendered necessary present action on these two matters. Important though it is that provisional arrangement should now be made for the leadership, the dispatch of that business merely touches the hem of the big task of setting the affairs of the Conservative party in order. That must be gone about in the most systematic manner. There must be no sparing of pains or sparing of feelings of persons unworthy of the trust of the Conservative party. A convention that is really born of all Canada Conservatism must provide for the organization, equipment, and upbuilding of the party, and the making of it a fit instrument to establish its great policies.

4. ELECTION OF HON. R. B. BENNETT AS LEADER OF THE CONSERVATIVE PARTY, 1927

((a) *Halifax Herald*, October 10, 1927.)

Winnipeg, October 9. The decks are all clear for the opening of the Conservative Convention to-morrow. All the party chieftains have arrived and many of the rank and file. Contingents from Nova Scotia, New Brunswick, Quebec, and British Columbia are due on the morning trains and additional preparations were made to-night for their registration in time to attend the morning deliberations.

The Convention will be called to order by Hon. Hugh Guthrie, parliamentary Conservative leader, at 11 o'clock. On the election of a temporary chairman, it is likely that Nat Boyd, President of the Manitoba Conservative Association, will be chosen. When proceedings are actually underway, Hon. E. N. Rhodes, Premier of Nova Scotia, will probably be the choice for English permanent chairman, and Senator C. P. Beaubien, Montreal, or Hon. L. P. Normand, Three Rivers, French permanent chairman.

All committees and sub-committees which have been functioning in preparation for the rally have been dissolved, with the exception of the national committee.

Two important decisions were reached at Saturday evening's sitting of the national committee at which Hon. Hugh Guthrie presided.

It was decided that the leader selected must receive a majority of votes over all aspirants. There will be no elimination of candidates under the committee's recommendation, which will be submitted to-morrow to the Convention as a whole for approval.

The question of elimination was the subject of a series of lengthy discussions. The first proposal put to the committee was that after the fourth ballot, the lowest candidate should drop out of the running. This suggestion failed to carry with a majority of the members.

Two other proposals were then made. One, that elimination of the lowest man should begin after the third ballot, and the other, that elimination should start after the second vote had been taken. Both suggestions were disapproved; and finally it was determined that there should be no elimination of candidates at any time.

((b) *Montreal Daily Star*, October 10, 11, 12, 13, 1927.)

Winnipeg, October 10. With the opening of the Convention to-day the general feeling was that the fight for leadership lies between Bennett, Guthrie, and Cahan in the first instance with Drayton looming up in the offing as a prospect in case the hating gets sufficiently enthusiastic between the proponents of the big three before the final vote shifting begins.

' At the meeting feeling is not altogether friendly. There was a

distinct cleaving in the National Committee on even the most trivial questions. The Cahanites and the Guthrieites and the Bennetts were able to detect tactics advantageous for the opposition in everything from the morning cornflakes to the last nocturnal trip of the elevator. It began with the issue as to who was to officially declare the Convention assembled.

The Bennetts wanted General MacRae to do the work. It would be a nice gesture, they said, as the General has spent all his time and considerable money organizing the meetings. The others may have had a premonition or they may not but they argued that Mr. Guthrie should do the declaring and Mr. Guthrie won out by a majority of one on the vote. General MacRae got even last night with a flat-footed declaration in favour of Mr. Bennett as leader. It is not yet evident whether his support is to be an anticlimax but it is obvious that it has had the effect of tightening up the division in the British Columbia delegation, which is split in the main between Bennett and Guthrie.

With the Convention in session it was the consensus of opinion that Bennett was the strongest candidate on the first ballot but still a long way from having enough to elect. And thereby will hang the final tale. There is considerable activity to line up delegates on second and third choices and while none of the delegates is instructed, it is only human to suspect that they will be influenced to a large extent on their subsequent ballots by the inclinations of their first choices. It is here that Mr. Cahan and Mr. Guthrie are expected to gather strength. It is almost too much to expect either Mr. Cahan, Mr. Guthrie, or Mr. Rogers to throw any support to Mr. Bennett. Right now he appears to be bucking the field. The deciding factor would seem to be whether the Cahan support will finally go to Guthrie or the Guthrie support to Cahan. At the same time Bennett advocates are confident that their man will draw material support from the Quebec delegation, which arrived in force a few minutes before the official opening.

Sir Henry Drayton's chances are bound up in the possibilities of a deadlock in which none of the big three will be able to get the 50 per cent. vote necessary to elect. In the same connexion there has developed a considerable last-minute boom for Hon. R. J. Manion as a compromise. The Doctor is willing if the call comes.

The place where the Convention is meeting is a huge rink, lavishly decorated for the occasion, equipped with loud speakers and all such paraphernalia and with party legends emblazoned everywhere. They include: 'What Canada Makes, Makes Canada'; 'The Conservative Party Bigger Than East or West'; 'Manufacture Our Own Material At Home'; 'Agriculture, the First Confederation Development Within the Empire'; 'Canadian Jobs for Canadian Workmen'; 'Build Up,

Imperial Trade'; 'Burn Our Own Coal'; 'A United Policy, A United Party'.

As delegates filed in the band of the Princess Pats played splendidly an inspiring programme. Each delegation went to a section of its own, and as the managing director put it 'each of you must stay in your own yard'.

Announcement of the programme for the Conservative Convention opening to-day is officially made as follows:

MONDAY

- 11.00 a.m. Meeting called to order by Hon. Hugh Guthrie, temporary leader.
- 11.05 Lord's Prayer in English and in French.
- 11.10 'God Save the King', and 'O Canada'.
- 11.20 Election of temporary chairman.
- 11.25 Election of temporary secretary.
- 11.30 Address of welcome by Col. Ralph Webb, Mayor of Winnipeg.
- 11.35 Address of welcome by Col. F. G. Taylor, Manitoba Conservative leader.
- 11.40 Address of welcome by Hon. Joseph Bernier, M.L.A., St. Boniface, Man.
- 11.45 Reply by Mrs. A. F. Jeffrey, Brandon.
- 11.50 Reply by ex-Mayor Charles Duquette, Montreal.
- 11.55 Reply by Hon. J. B. N. Baxter, Premier of New Brunswick.
- 12.00 Reply by Hon. L. P. Normand, Three Rivers, Que.
- 12.05 p.m. Reply by Mrs. Henry Joseph, Montreal.
- 12.10 Appointment of credentials committee.
- 12.30 Address by Rt. Hon. Sir Robert Borden.
- 3.00 Interim report of credentials committee.
- Election of permanent presiding officers.
- Election of permanent secretaries.
- Adoption of agenda for rules and procedure.
- Appointment of standing committees.
- Submissions of written resolutions.
- 8.30 Proceedings informal. Convention to be in charge of Manitoba entertainment committee.

TUESDAY

- 10.30 a.m. Business of the Convention.
- 8.00 p.m. Nominations for leadership.
- Nominating speeches.

WEDNESDAY

- 10.30 a.m. Unfinished business except ballot for leader.
- 3.00 p.m. Election of leader.
- Speeches by candidates.
- Speech by elected leader.
- 'God Save the King'.

Winnipeg, October 11. The Conservative National Convention assembled this morning in an atmosphere of untroubled calm. . . .

There were no arguments or disputes¹ but rather, in the main, a series of speeches by Conservatives outside Parliament, glorying in Conservative traditions and contributing ideas for the upholding of the party and the furtherance of its cause. . . . The Resolutions Committee is struggling with some sixty suggestions as to what should be the policy of the party. Some will be concurred in; many will be modified; a lot will go into the discard; some members think that the matter of platform ought properly be left to the parliamentary party rather than to the hurried consideration of a lay convention. There are some rather radical proposals especially with regard to the tariff.

Orange delegates had a meeting last night and it is said that they are inclined to support for leader only some one likely to make the unrestricted return of Western resources a part of his policy.

The engrossing interest is in the leadership, and some delegates show signs of restlessness. While the Resolutions Committee is industriously at work and until it reports, the Convention itself is largely a question of filling in. Scores pace up and down outside, discussing the leadership for which candidates will be nominated to-night.

Winnipeg, October 12. Resolution after resolution swept through the Convention when it resumed this morning. There was no discussion. The resolution was read. Mover and seconder made no speeches. The gavel fell. The resolution was declared carried. Resolutions so adopted were those on legislation for ex-service men; a Pacific coast outlet for the Peace River district; the use of Canadian ports; St. Lawrence canals; freight rates on grain; inter-provincial highways; and the completion of the Hudson's Bay Railway. . . .²

Six men who rank high in the esteem of the Conservatives of the Dominion are in the field for the permanent leadership of the party. They are, to give the names in the order of nomination, Hon. Robert Rogers, Winnipeg, former Minister of Public Works; Hon. R. J. Manion, Fort William, former Postmaster-General; C. H. Cahan, K.C., Quebec; Hon. Hugh Guthrie, house leader of the party for the past year; Hon. R. B. Bennett, West Calgary, former Minister of Finance; Sir Henry Drayton, former Minister of Finance.

They were given and accepted nomination at last night's session of the National Liberal-Conservative Association's Convention at the Amphitheatre rink, which was filled to capacity, at least 8,000 persons assembling to watch the interesting selection proceedings.

Other seven outstanding men of the party were proposed but declined to accept nomination. They were: Right Hon. Arthur

¹ The opening day of the Convention had been marked by a bitter dispute between the late Prime Minister, Rt. Hon. Arthur Meighen, and the Premier of Ontario, Hon. G. Howard Ferguson, on the subject of Mr. Meighen's 'Hamilton Speech'. (Cf. *infra*, Section II, C.)

² These resolutions, together with a great part of the platform, appear *supra*, Section I (A) (4).

Meighen, former Prime Minister; Hon. G. Howard Ferguson, Premier of Ontario; Sir George Perley, former High Commissioner in London; Col. J. A. Currie, Toronto; Hon. J. B. M. Baxter, Premier of New Brunswick; Hon. E. N. Rhodes, Premier of Nova Scotia; and Hon. H. H. Stevens, former Minister of Customs.

Addresses in support of their candidature and setting forth policies that they would do their utmost to get carried out were made by the men who accepted nomination, and these, with the speeches of their proposers and seconds, provided the huge audience with an interesting and exciting evening.

The most scrupulous care was taken by those in charge of the Convention to see that the utmost fair play was given in the dramatic race for the leadership. The names of those proposed were submitted in writing to the nine provincial deputy chairmen of the Convention, and were then announced by Hon. E. N. Rhodes, Convention chairman. Then, in order that no advantage might be given to any one in the matter of position, the nomination papers of those who had undertaken to enter the contest were drawn from a hat.

The luck of the draw was with Hon. Hugh Guthrie; and his proposer, Dr. J. T. M. Anderson, Saskatoon, started what resolved itself into what was to all intents and purposes a great oratorical competition. The speechmaking continued till well after midnight, and while the galleries thinned out, the delegates all remained till the last.

Winnipeg, October 13. It is the cold grey dawn of the morning after the Conservative party has a new leader and a reconstructed programme. Out of the emotional debauch of Monday in which Mr. Meighen and Mr. Ferguson committed political suicide federally, the party proceeded with an unexpected degree of tranquillity to the adoption of a modernized platform and the selection of Hon. R. B. Bennett as leader. There were six hats in the ring when Mr. Bennett's was drawn. The result was not in the nature of a surprise to the Convention, though it was not anticipated that Mr. Bennett would secure a majority on the second ballot. . . .

The two ballots resulted as follows:

		<i>First Ballot</i>	<i>Second Ballot</i>
Bennett	.	594	780
Guthrie	.	345	320
Cahan	.	310	266
Manion	.	170	148
Rogers	.	114	37
Drayton	.	31	3

On the first ballot 1,564 votes were cast, making 783 necessary to elect. On the second ballot there were 10 votes less, and 778 were required to elect.

When Mr. Bennett's victory was announced, delegates and spec-

tators rose in wild applause. Hon. Hugh Guthrie moved that the election of Mr. Bennett be made unanimous; C. H. Cahan seconded it; Hon. R. J. Manion added his 'third'. The new leader, with much emotion, expressed his thanks, and amid wild cheering the motion carried.

The vote was even a greater surprise to some of the candidates than it was to the delegates. Mr. Guthrie was the only candidate who ran true to prospects. He took a large measure of the support which members of the House of Commons were able to influence. On the second ballot he lost considerable of the support which he had received from the Maritime Provinces. Mr. Cahan's vote on the first ballot was not up to preliminary expectations and on the second it was evident that a sizeable wing of the Quebec delegation swung over to Mr. Bennett. The Rogers vote on the first ballot was a gesture of friendship to 'good old Bob', and it moved over to the Bennett column almost to a man. Dr. Manion failed to develop the strength predicted and promised though it was the feeling that it would take four or five ballots to develop his strength. Unfortunately for the doctor the second ballot settled the issue. Sir Henry Drayton was not expected to show except in the event of a deadlock, and none developed. . . .

The selection of a leader was the major interest of the Convention. With that issue settled the 1,600 delegates dwindled to less than a quarter of that number. Reservations, which had been cancelled in prospect of a late night sitting, were hurriedly renewed, and midnight saw four special trains speeding east and west loaded with delegates.

B. RELATION OF PARTY LEADERS TO THE PARTY PLATFORM

I. THE LIBERAL LEADERS AND THE LIBERAL PLATFORM OF 1919

(a) *Attack on the Prime Minister by the Leader of the Opposition.*

(*Canadian House of Commons Debates*, March 13, 1922, pp. 24-45.)

Right Hon. ARTHUR MEIGHEN (Leader of the Opposition): . . . Did not the present Prime Minister—speaking in this House in the month of June, 1920, almost a year after the Convention—pledge himself that when returned to power the resolution in question would be made the law of this country. Do hon. gentlemen not remember? Did not the present Prime Minister—speaking at various places in the country in the fall of 1920—bind himself to the terms of that resolution, and declare that by it he was going to stand or fall? Did he not, as respecting many of those terms, commit himself definitely even in the summer of 1921? I am quite aware that his language moderated after he was joined by the present Minister of Justice, after the resignation and candidature of the Provincial Treasurer of the province of Quebec, and after those interests that to-day are responsible for his

elevation to the Prime Ministership came and exercised their sway in the councils of his party. I know that it was in the fall of 1921 that he preached throughout Canada the doctrine of the chart that all the commitments of the 1919 Convention were merely indications of the direction in which he should proceed, and that as to how far he proceeded, or whether he proceeded at all, he was going to be governed by the wisest councils of the men around him. . . .

Then it was that the doctrine of the chart was promulgated, then it was that the guarded empty language came into use on platform after platform—about a tariff for revenue, about a tariff for producer and consumer, about a tariff for the home—then it was that all these phrases came to mind, and the hon. gentleman sought by means of them to escape from the commitment which he and his party had made in the month of August, 1919, upon which he accepted the position of leadership that has brought him the Prime Ministership of this country but which binds him in the same degree to-day as when he was simply leader of the Liberal party. . . .

The day of the return to power has come. The hour has struck and the moment is here. I would not expect that they would embody this resolution in the Speech from the Throne, because that is not the custom, but I would expect that the paragraph in the Speech from the Throne would be comparable in principle and would intimate a fulfilment of the resolution. I asked this House and my hon. friends to the left, whom I endeavoured to persuade many a time of the very truth that is revealed before their eyes to-day: Do you find in the Speech from the Throne the slightest intimation or promise or hint that anything will be done, even of the very nature of that delineated in the resolution of 1919? . . .

Right Hon. W. L. MACKENZIE KING (Prime Minister): . . . My right hon. friend asks: What are the changes that are to be made in the tariff. He knows very well that the occasion of the debate on the Address in reply to the Speech from the Throne is not a time to discuss tariff changes. I think he may feel well assured that the pledge made will be carried out during the course of the present session, and I think that not only he, but hon. members of this House and the country generally, will rejoice that they have, in the person of my hon. friend the Minister of Finance (Mr. Fielding), the one man above all others in this Dominion in whom the people of Canada, irrespective of party, have the utmost confidence in dealing with financial and tariff matters.

My right hon. friend seemed to be grieved that during the course of the campaign, in touching on tariff matters, I had made use of a little simile which served to describe my attitude in relation to the management of public affairs and to the tariff in particular. He seemed to think that in dealing with these important public matters, I should not have spoken of a chart and compass, and he sought to

convey the impression—at least I thought he did—that in some way or another I had resorted, during the course of the campaign, to an attitude which was wholly new, and which was giving me some means of escape from dealing with tariff matters other than that which I had previously taken. He referred to the Convention of the summer of 1919 and intimated that at that Convention a platform had been drafted to which I was necessarily obligated, and that in some way I was betraying that whole Convention, in the recent campaign, in not going forward with that platform in hand and saying that regardless altogether of existing conditions or the language therein contained, I was supporting it exactly as expressed. In order that there may be no doubt as to the position I took at the time of the Convention of 1919 in reference to the platform as laid down, let me read the words which I addressed at that time to the assembled delegates. I have in my hand a copy of the proceedings of the Liberal Convention, and at page 199 my right hon. friend will find the following:

... I know that one who is called upon to accept the office of leadership must first and foremost be the willing servant of all, and that in seeking in the spirit of service to meet the wishes of those who have chosen him as their leader, he may look for guidance and counsel to the great forces assembled about him. . . . I hope you will feel that in seeking to do the work of the Liberal party in the way I believe the Liberal party would wish it to be done, I shall rely upon the counsel of those who are outstanding in the ranks of the party, the Liberal members of the Senate, the Liberals in the House of Commons, the leaders of the party in the several provinces, the representative men who are gathered together here; and that in this way I shall find a compass which will point the direction that ought to be taken, and will point it aright.

If more is needed, that more is to be found in the platform which has been laid down by this convention. That platform, ladies and gentlemen, is the chart on which is plotted the course desired by the people of the country, as expressed through the voice of the Liberals assembled here. . . .

That was the position which I took on the occasion of being honoured with the leadership of the Liberal party at the Convention of 1919. That is the position which I took during the recent campaign, and that is the position which I take at the present time. . . .

(b) *Statements by the Minister of Finance on the Tariff Plank in the Platform of 1919.*

(*Canadian House of Commons Debates*, June 6, 12, 1922, pp. 2529–30, 2851.)

June 6. Right Hon. ARTHUR MEIGHEN (Leader of the Opposition): . . . Aside from the effect of the sales tax, aside from everything, what is to be thought of the microscopic reductions made here in relation to the pledge of the Liberal party, a pledge endorsed by the present Minister of Finance himself?

Mr. W. S. FIELDING (Minister of Finance): My hon. friend has no authority for that statement; I may tell him, he is mistaken. I have never voted for the tariff items of the Liberal platform and never concealed the fact that I did not approve of the platform in that respect.

Mr. MEIGHEN: I accept the Minister's word without the slightest reservation, but I fancy that this is the first time, after honourable gentlemen opposite have been in power for five months, that any one in this country outside the walls of that Convention knew that the present Minister of Finance dissented from the tariff plank of the Liberal platform.

Mr. FIELDING: My right hon. friend is the first person to make that statement, and I therefore now correct it.

Mr. MEIGHEN: One would think that the Minister would not need to wait until I should make the statement to make his position clear in the matter. . . .

If the Minister of Finance differed from the platform of the Liberal party and refused to be bound by it if returned to power, it was his duty distinctly to say so, to state wherein he disagreed with the platform, to make his position perfectly plain so that no one might be deceived. I know that the hon. member owns a journal—I presume he owns it—and it was stated therein, shortly afterwards, that the Convention had gone too far, and that it was the habit of conventions to make platforms to get in on rather than to stand on. But I do say to the Minister of Finance that he should have stated clearly and definitely, not through the medium of a journal, but with his own lips, precisely in what respect he differed from that platform and by what he proposed to be bound. Even though he did not vote for it, is he not, as a member of the party and the Convention adopting such platform, bound by the pledges therein set forth until he severs himself from that party and that convention? And what is to be said of other hon. members opposite? How many members of the Government of the day will follow this example and stand up and declare that they were never parties to this tariff resolution at all? We are getting revelations now. Are there any more? Was the Prime Minister a party to that resolution? Did he support it? We will expect him to tell us when he speaks—but he will not. . . .

. . . I believe it was the hon. member for North Bruce (Mr. Malcolm) who, the other day, enunciated some theory in this House and expressed the pious aspiration that some time that theory would find its way into the platform of the Liberal party. Well, I am sure that if he loves his theory he will not wish for it a fate like that. There will indeed be a dark outlook for any policy that ever finds its way into the platform of the Liberal party.

June 12. Mr. W. S. FIELDING (Minister of Finance): . . . The great Conservative party has been capable of great things and it ought

not to descend to little things. With respect to the budget, let them, at this time in our history, establish some principle and lay down some policy, and do something more than indulge in mere nagging and scolding. That is all my right hon. friend has done. He scolds the Government. He stresses the policy laid down in the Liberal platform in 1919 and inquires 'Is that statement true?' There are some statements in it that are true. 'Is this budget to-day rigidly complying with the Liberal platform of 1919?' he inquires. No, nobody ever expected it to do so.

Some hon. MEMBER: Oh, oh.

Mr. FIELDING: I do not believe the Liberal platform of 1919 played any considerable part in the election campaign last winter.

Some hon. MEMBER: Oh, oh.

Mr. FIELDING: I never mentioned it, I never heard it mentioned; it was never discussed in any election in which I took part. I know from reading the press, however, that my Conservative friends referred to it. It was always the tariff they talked about and the Liberal platform of 1919, and they generally talked in that way for two reasons: The first was in order to declare that the Liberals were not living up to that platform; and they pointed to this, that and the other constituency where they alleged somebody was saying something that was not in harmony with the Liberal platform, and therefore they argued 'The Liberal platform is dead and gone'. The other reason they referred to it was to enable them to take the stand that if the Liberal platform was adopted the country would be ruined. I do not think the Liberal platform of 1919 had any material result in influencing the election. The election did turn upon the general tariff policy but I am going to say frankly I do not think that was the reason that people voted so enthusiastically for the Liberal party. I think something else was responsible for their enthusiasm. They made up their minds that whatever was going to happen they were not going to have any more of the Tory Government.

(c) *Does a Platform of a Party Convention Bind the Leaders of the Party?*

(*Canadian House of Commons Debates*, May, 17, 22, 23, 1923, pp. 2852-3, 2994, 3007-8, 3020-1, 3047-8.)

Mr. W. D. EULER: . . . I presume that when the right hon. Leader of the Opposition takes part in this debate he will as usual refer to breach of faith on the part of the Liberal party with respect to the tariff plank in the platform of 1919. That is usually his stock-in-trade, and I for one do not particularly blame him for taking any opportunity that may present itself in making out what I consider to be a poor case. Perhaps it may shock some members on this side of the House when I say that I have very little confidence in the making

of platforms, anyway. I do not believe that a Government or members elected to the responsibility of a seat in this House should necessarily be asked to accept what may be ill-digested planks in any platform imposed upon them by people who come from various parts of the country, and whose suggestions probably are as much dictated by political expediency as anything else; I do not believe that men who represent the public should be expected to carry out such ill-considered behests on the floor of this House. So that speaking for myself, Sir, I would say frankly that in the public interest the platform of 1919 should not be permitted to shackle the Government responsible to all the people, whether it be a matter of tariff or anything else.

Mr. GOULD: Would the hon. member inform me whether that expression of opinion was voiced by him in the hall where the platform of 1919 was framed?

Mr. EULER: I may tell my hon. friend that I was not present when the platform was framed and I never gave adherence to it afterwards. . . .

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Rt. Hon. ARTHUR MEIGHEN (Leader of the Opposition): . . . I pass from reciprocity and I come to a discussion of other proposals of this budget. I purpose to discuss them in the light of their wisdom and in the light as well of the political honour of this Dominion. Hon. gentlemen opposite are not very fond of such discussion. Indeed, there is a tendency in more quarters than among the Government members, but animated, I think, solely from there, to say: 'Oh, we will let the past bury the past; political platforms anyway are not very serious matters; we cannot erect a future by decrying the past; the Liberal Convention is four years old now or nearly so, and there is nothing to be gained by bringing its unwelcome ghost before this House.' Such is the constant importuning of hon. gentlemen of the Government side. I venture to say this—and I do so without any assumption of superior virtue at all—that if political platforms are to mean nothing, if they are only constructed to be discarded, if the carrying of them into effect, when power is gained, is not a matter of honour and of right, then responsible government is a mockery, public life is a sham and representative institutions are no better than a fiasco. Hon. gentlemen do not like to be reminded of their commitments of years ago. I have not seen one of them produce that brown-covered edition of the chronicles of the Liberal party at Convention in 1919. I have not heard one of them read from it in this House or seen them show it to his fellows. The hon. member for North Waterloo, bolder than the rest, comes forward and says: 'I do not think a Government should be bound by the ill-digested conclusions of a Convention.' And the Minister of the Interior (Mr. Stewart), while affecting a certain academic loyalty to the resolutions of that

Convention says to hon. members to my left: 'Oh, it is all right for you to talk; you are in opposition; but it is altogether different when you get into power.' I have listened during the debate to this sort of contention from the hon. member for North Waterloo in the clear language that he uses so well; I have listened to dozens more of apologetic imprecations from the perspiring periods of the Minister of the Interior, all the way through to the massive and majestic eloquence of the Minister of Agriculture. But let hon. gentlemen reflect: What is to be the result on the young men, on all the people of our country, if honour and fidelity to political pledges are to be openly flouted in the Parliament of Canada? Hon. gentlemen tried it in 1896. They made a show of allegiance then which at least had the merit of a certain plausibility. Now, not from one without authority, not through a mere backbencher, but through the mouth of the Minister of Finance, who is in charge of fiscal policy, they flout all allegiance to their commitments of only four years ago. The Minister of Finance openly tells this House that he is not bound by those covenants, that his Government is not bound by them, that his party is not bound by them. Why? Because at that Convention he did not vote for them himself!

I said I would speak frankly in the presence of the Minister of Finance. He is not here, but I cannot be deterred on that account. The Minister of Finance has done no credit to the politics of Canada when he made that assertion; nor has he done any credit to his own record in our public life. The Minister of Finance was a party to, was present at, and took an active share in the framing of the very resolutions he now repudiates; and after they were adopted he contested on the basis of those pledges the leadership of the Liberal party which had adopted them and which had pledged itself to put them into effect. The hon. gentleman, for months after, went through this country as a leading Liberal and as the prospective Minister of Finance and never for one moment gave in public a soul in Canada to believe that he himself differed in the least degree from the pledges and commitments of his party. Then he got into power and said, 'I am bound no more'. His Prime Minister (Mr. Mackenzie King), too, stood up and declared last year that all he was bound by was a certain obligation to regard these specific, definite, concrete tariff covenants printed in his platform as a chart and compass to guide him in the sea of politics; and he the same Prime Minister listens now to his Minister of Finance declare openly to Parliament that he has flung chart and compass away after the platform, and that all are gone and guide him and his party no more. And this is called honourable politics! . . .

Hon. A. K. MACLEAN (Halifax): . . . I was not at the Liberal Convention of 1919. . . . Therefore perhaps I can speak with a little more

freedom in this regard than can some of the hon. members who were present at the Convention. The tariff policy enunciated at that Convention is not before me at the moment, but in general terms it declared in favour of an increase in the British preference and for substantial reductions on specified articles. I do not hesitate to say that it is unwise for any party convention to write a tariff schedule. It is not their business and they cannot do it; and I should say very frankly and emphatically of the Liberals who were gathered together at that time—I know them, and I do not want to say anything that is not inspired by kindness so far as they are concerned—that they could not possibly have been in a position to write a tariff schedule then. It was their duty to declare themselves upon matters of policy and nothing else. I say the same thing, too, about the policy, the platform, of hon. gentlemen opposite; they were equally foolish. If those hon. gentlemen came into office to-morrow they could not carry out their programme; and if I were to lead them through that door yonder, one by one, I am sure they would agree with me in that statement. I should hardly expect them to do so collectively before the public, however. I have not the slightest doubt that in regard to their policy pretty nearly every hon. gentleman opposite me disagrees emphatically with one or more of the planks of their platform; I have too high an opinion of them individually and collectively to believe otherwise. At the same time I am not criticizing the main principle running through their platform, and I repeat that political parties are perfectly within their rights and are only performing their duty by the public in a proper manner when they declare themselves on certain principles in relation to public policy. But they have no right to deal with details, and if they do so they are bound to find themselves in serious trouble later on. . . .

Mr. A. McMaster: . . . The Finance Minister has suggested that he does not regard himself as bound by this programme. I do not pretend that a responsible Minister is bound to take a programme of this sort and to implement it into legislation in identically the manner in which the programme sets matters forth. I hope I am no mere doctrinaire, but what I do say is, that it is the bounden duty of public men who would consider themselves bound by such a programme to put its main features substantially into effect. The Finance Minister says he is not bound by this programme. Well, I will not permit myself the freedom of language which the hon. Leader of the Opposition permitted himself this afternoon. I am a very much younger man than the Finance Minister. I have been associated with him for a great many years, he as a leader of a party with myself as a humble follower, but I say this: That he attended the Convention, that he was appointed to—although I do not remember whether he attended or not—the General Resolutions Committee of the Convention, and—what is perhaps the most important of all—that after

we had passed this resolution by an overwhelming majority he accepted nomination as the leader of the Liberal party the day after. I do not suggest for one instant that he, by that act, undertook to carry out to the letter this programme; but I say that his acceptance of nomination as a possible leader of the party could be reasonably interpreted as an acceptance in its general outline and general principle of the resolution which had been passed. . . .

Rt. Hon. W. L. MACKENZIE KING (Prime Minister): . . . First, let me speak of the charge that the action taken by the Liberal party in this budget has not been in accordance with the platform of the Liberal party as laid down at the Convention of 1919. I say that any such charge is wholly unwarranted. . . . I noticed in the remarks of my right hon. friend (Mr. Meighen) yesterday, that although he introduced many subjects in the course of his speech, there was one very significant omission from all that he said. He made no reference whatever to a single speech of mine delivered during the campaign of 1921. I spoke in every province of the Dominion with the exception only of the province of British Columbia and in every province in which I spoke, from every platform upon which I stood, I took occasion on this subject of the tariff, to refer to the Convention of 1919 and the interpretation which the Liberal party put upon the Liberal platform as adopted at the time of that Convention. I spoke in terms exactly similar to those which I am asserting at this moment. I made it plain, using indeed, the very simile I have used this afternoon, that if returned to power I should regard the platform as a chart on which was plotted the course the Liberal party was expected to take. I said that I would not seek to follow it literally, that I felt it would be unwise to do so. . . . I also made it clear that whatever the Liberal party might do with respect to the tariff, it would do in relation to conditions existing at the time; and I know I made the further assertion that no established industry in this country operating at that time and which was earning a legitimate profit need have any fear, if the Liberal party were returned to power, that its legitimate business would be injured by any revision of the tariff. That was the position I took throughout the campaign; I took it in every province; and I challenge my right hon. friend and those around him to search the journals of this country from one end of it to the other and bring into this House of Commons, if they can, a single statement of mine, truly reported, that is contrary to what I am saying at this moment.

Now, Sir, I say that that is the pledge by which we are bound; that is the position we took when we appealed to the country. We were returned on that representation and on no other. What we have done in this budget is to carry out the spirit of the platform as laid down in 1919, in the light of conditions as we see them at the present time. . . .

2. THE CONSERVATIVE LEADERS AND THE CONSERVATIVE PLATFORM
OF 1927

(a) *The Conservative Platform.*

(*Montreal Daily Star*, October 10, 12, 1927 (editorial).)

October 10. That sure instinct which is the guiding star of the average man has apparently brought the delegates now assembled in Winnipeg to a common conclusion, i.e. that the real task of the Convention is to select a leader and not to write a platform, for the leader will largely constitute the platform.

People will forget in three months, if not in three weeks, what is written into the platform—if the mischievous Liberals will let them. But the personality of the new leader will just begin to impress itself upon the country as the verbiage of the platform is forgotten. It is the leader who ultimately decides how much of the laboriously constructed platform is to be carried out, how much is to be diverted, what interpretation is to be placed upon its always ambiguous clauses and what sections of it are to be decently buried.

The sage might just as well have said: 'I care not who writes the platforms of a party if you will let me select its leaders.'

A platform can be best judged by what it leaves out. There will be plenty of wild-eyed suggestions coming from quarters little qualified to select either winning or practicable political policies which a courageous and shrewd Resolutions Committee will diplomatically lay on the table until the Convention adjourns. There will be other suggestions, intensely popular in limited localities but neither long enough nor broad enough to bridge the noble space of this great Dominion. A federal policy must be of federal application, federally acceptable and calculated to strengthen the bonds of confederation.

But no platform can unite the party if the Convention gives us a leader whose personality will divide it. The paramount need of the Conservative party in Canada is union. If all the Conservatives in the Dominion can be rallied to the new standard, it will not be long until we will have carried our banner into the entrenchments of power. There are admittedly far more Conservatives in this country than those of any other political faith. The existing Government is a Coalition, either of whose members would be in a minority at the polls or in the present Parliament.

But even the Conservative party cannot divide itself and conquer.

October 12. The Conservative Convention has apparently listened with at least one ear to the wise advice which came to it from all over the country not to attempt to write a 'platform'. The loose and unrelated collection of resolutions which it has adopted—commonly

with little discussion and even less consideration—come as near as such a flood of words possibly could to being the absolute zero in the way of ‘platforms’. Most of them are notable for what they leave out; and yet some of them could with profit have left out more.

And the Convention was very well advised. The framing of a ‘platform’ for a national party is a gigantic and yet delicate task which could well engage the close attention of a group of leaders for weeks, with reports from all parts of the country and sitting in quiet conclave. It is utterly unfair to load such a burden upon the backs of a three-day Convention, whose members are constantly disturbed and blown about by the tempests and cross-winds of a contest for the leadership.

Naturally, they have—so far as they have done anything—played safe. Their Labour resolution was taken from the Treaty of Versailles, the Decalogue apparently being deemed a trifle scattering. Their resolution on Protection wisely does not mention Protection. Why should it? Everybody knows that the Conservative party stands for Protection, and that the Liberal party dare not disturb it. The principle has ceased to be an issue in our politics. It is merely a question of application; and if any one can devise a means whereby politics can be kept out of this operation, he will be a public benefactor.

We rather think that Frank J. D. Barnum could have written a resolution on pulpwood with more pith in it—and he probably did. But the Resolutions Committee pulped it. They were not going to have any rough spots in their platform. It will be impossible now to find anybody who disagrees with their statesmanlike pronouncement on the subject.

The only clash over the resolution on immigration was as to the curtness of the reference to ‘Oriental exclusion’. This phraseology was felt to lack that ‘Oriental suavity’ and polite periphrasis so dear to the Asiatic soul. The idea seemed to be that the Oriental—including our fellow British subjects in India—would not so much mind being kicked down the back stairs and back home, as having our love dissembled by the rude abruptness of our declaration on the subject. That will be as it may be. They are not quite such fools as some people appear to imagine. And, of course, we perfectly understand that this resolution is meant to be seen nowhere east of the Rockies. But an exception in the case of India, would have brought us no Indians, cost nobody anything and struck an Imperial note.

In any event, the Convention has got the right idea, i.e. that the best platform for a hurried, haste-driven and heterogeneous gathering to adopt is either a blank piece of paper or one to which even the most cantankerous Grit could not take exception.

(b) *The Winnipeg Resolutions.*

(*Montreal Gazette*, October 18, 1927 (editorial).)

A correspondent, of unimpeachable Conservatism, writes to *The Gazette* very sadly on the subject of the resolutions passed by the Conservative Convention at Winnipeg. It seems that he does not believe in hunting ducks with a brass band, his reason being two-fold, that the procedure is undignified and that ducks are very rarely deceived by methods of that kind. There is a possible third reason, namely, that the strains of the band in this instance have been purposely subdued so that discordance may not be unduly marked; but that has more to do with the musicians themselves than with the free and independent elector whose allegiance is sought. The Winnipeg resolutions express the spirit of compromise; in other words, they represent concessions by opposite schools of thought, and if one school has not done too much of the conceding, it is possible that the party, as such, may not find the result as compromising as our correspondent seems to fear—and as many others also fear. This will depend upon whether or not the hands of the new leader are to be tied by the Winnipeg resolutions, or whether his leadership is to be a real thing. The best results will ensue if Mr. Bennett is permitted to take the best of the platform, if it is a platform, and to leave the rest; it will be better for the Conservative party and very much better for the country. The 'social' resolution, for example, is one which, in our judgement, can be left out of the reckoning, since it is something which no federal party, with all the will in the world, can carry into effect. It was passed, like so many of the others, in haste, and if the party is not to repent at its leisure, the less that is said of it hereafter the better for all concerned. It is not a sound declaration of policy from any point of view, and, as we have already stated, it cannot be implemented.

Whilst the dominating purpose and the vital issue of the national convention was the selection of a leader who will command the confidence and support of Conservative men and women in every province of the Dominion, and whilst there was a clear understanding that there was not to be the cutting and drying of a party programme for a new leader to take or leave, it was not to be expected that the delegates would leave Winnipeg without some expression on national issues. This has been done in the resolutions submitted to and adopted by the convention. They deal in the main with the tariff, immigration, coal transportation, labour, and old age pensions. The general convictions set down under each head met with little criticism, and received, perhaps, too little consideration.

(c) *What Platform?*

(*Toronto Globe*, October 17, 1927 (editorial).)

After joining with *The Montreal Gazette* and *The Montreal Star* in urging the Winnipeg Convention to refrain from tying the Conservative party down to particularities in a platform—and getting its way—*The Toronto Mail and Empire* is advising its readers to 'be true to the platform'.

It is a terrifying chilly admonition, if *The Montreal Star* has correctly sized up the situation by saying that 'the loose and unrelated collection of resolutions which it has adopted come as near as such a flood of words possibly could to being the absolute zero in the way of platforms'. Perhaps it was this flood of words which led *The Mail and Empire* to say the resolutions covered all current federal politics. It also says there was no resort to vague or ambiguous language, while the Montreal paper states that most of the resolutions are notable for what they have left out. Then we have it on the authority of the Montreal organ that, 'naturally, they have—so far as they have done anything—played safe', and on the authority of the Toronto organ, 'the resolutions are express statements of the party's stand on the several questions of the day'.

Of course it is none of *The Globe*'s business if one leading Conservative paper says the Convention was well advised to listen to the wise counsel which came from all over the country not to attempt to write a platform, and that it listened well, while another leading Conservative paper urges all of the party to 'be true to the platform'. But it must be conceded that it arouses curiosity. Can it be that the Montreal paper slept through the period of platform-making, or is it that the Toronto paper dreamed something which did not take place? If it was a dream it must have been accompanied by pleasing smiles, for we have *The Mail and Empire* editorial recording that 'frankness has always been the rule of the spokesmen of Conservative policy'. And it was so realistic that it is further recorded: 'The Conservative rank and file know exactly to what their party is committed in each case, and all who belong to other parties know exactly what is proffered for their support or opposition.' *The Montreal Star*, on the other hand, puts it thus: 'The Convention has got the right idea, i.e. that the best platform for a hurried, haste-driven and heterogeneous gathering to adopt is either a blank piece of paper or one to which even the most cantankerous Grit could not take exception.'

Can one be blamed for asking what platform it is *The Mail and Empire* is talking about, which is so definite, clear, and purposeful, and to which all should 'be true'? Of course, there has been a Conservative tradition that two planks have never failed in any platform of the party, and if all others succumbed to fire, hail, wind, or frost, these,

two remained. Thus, a protective tariff formed the base, and the old flag was kept flying aloft as the emblem of close Imperial relations. But, alas, in this series of resolutions, which to *The Montreal Star* said nothing and to *The Toronto Mail and Empire* covered everything, the old foundation is missing, and the flag is all but furled.

So we cannot help it—we must again ask: What platform is it which *The Mail and Empire* declares covers ‘every national question with which public opinion is concerned at the present time?’

C. RELATION OF PARTY LEADERS TO THE PARTY POLICY

I. PARTY LEADERSHIP

(*Toronto Mail and Empire*, September 18, 1926 (editorial).)

(The following editorial appeared after the Conservative defeat at the election of 1926—the second defeat which the party had suffered with Right Hon. Arthur Meighen as Prime Minister, and which made his resignation as leader imperative.)

Hardly had the votes been counted before the cry ‘Meighen must go!’ was being raised by sundry voices in the Conservative party. In the first hours of disappointment over the election returns this cry may have expressed the momentary thought of many others whose sense of decency restrained them from joining in it. In this matter the judgement of the Conservative rank and file, as distinct from the impulsiveness of some would-be king-makers of the party, is not to be inferred from the noise made by a few hasty shouters. If the Conservative party wants a change of leader, it will find means of giving deliberate expression to its will in that regard. Whatever decision may be reached by the party, or forced by Mr. Meighen himself, there is no doubt in our mind that he can count on receiving fair play.

There must be a division of labour in the household of any political party. The leader cannot bear the whole burden of the work to be done. Wherein has Mr. Meighen failed in his part? As a parliamentary leader he has no peer in Canada, whether in office or in opposition. In a speech-making campaign he is without a rival. If he is open to criticism at all in relation to the performance of a leader’s duties, it is on the point of excess rather than of deficiency. Our own view is that since the party came into power in 1911 Conservative leaders have at times taken a little too much on themselves in the matter of shaping policy. The policy of the Conservative party is delivered to the leader, and it is his business to do what he can to carry it out, not to presume to add to it or subtract from it. When Sir Robert Borden was leader and Prime Minister he exceeded his warrant in laying down the doctrine of Canada’s status as an independent member of the family of nations, free to vote against the

mother country in international conferences. He had no proposition of Conservative policy that he could refer to by way of explaining his taking the long step he took for the separate diplomatic representation of Canada at Washington. He was not carrying out any article of Conservative policy when he took his stand against the Sovereign's conferring titles on Canadians for services deserving of such recognition. Nor have these changes had approval at the hands of Parliament, for in the first general election following their adoption the Conservative Government was defeated at the polls. Mr. Meighen did more than his duty as a party leader when he stated in his Hamilton speech that, should Britain again find herself in a crisis similar to that of 1914 no troops would be allowed to leave the country to aid her until a general election should be held and the people's consent by that means obtained.

When leaders go against the grain of their party's traditional sentiments and expressed policy, they should be pulled up and required to keep within the party charter. Few of the party leaders this country has ever had, whether Conservative or Liberal, have not at moments gone somewhat beyond their latitude. For that they ought to be checked, not deposed unless they are very wrong-headed. . . .

2. RT. HON. ARTHUR MEIGHEN'S HAMILTON SPEECH AND THE CONSERVATIVE PARTY

(On November 16, 1925, Rt. Hon. Arthur Meighen made a speech at Hamilton, Ont., with the admitted aim of influencing a by-election which was being held at Bagot. The speech failed in its purpose, and also antagonized a large number of Conservative supporters throughout the Dominion. When the Conservative National Convention met two years later at Winnipeg Mr. Meighen, no longer leader, used the opportunity to attempt a justification of his almost forgotten speech—an act which called forth a violent answer from the Premier of Ontario, Hon. G. Howard Ferguson, and which threatened at one time to break up the Convention. (Cf. *supra*, Section II (A) (4).)

(a) *The Hamilton Speech.*

(*Montreal Gazette*, November 17, 1925.)

(Rt. Hon. Arthur Meighen speaking at Hamilton, Ont., said in part:) 'The Conservative party believes in exerting the whole influence of Canada within the Empire to make sure and ever surer the lasting peace of the world. The Conservative party believes that within the Empire the security of this Dominion can best be sought, and the Conservative party believes that the whole of Canada is ready at all times to take every honourable step to make our security certain. This and no more is what we always said and what we have always done; this and no more is what we will ever do.'

'In the late war, as in every war, the Government had to decide its course and submit the course to Parliament. Never did we think of sending troops from Canada until Parliament had approved our decision. Parliament met on the first day it could be called and gave its unanimous support to participation by this country. Never would any Government so much as dream of sending troops beyond our shores unless the authority of Parliament was first obtained. Indeed I would go farther.

'I do not anticipate that we of this generation will ever be called upon to take part in war again, and I earnestly hope that our children and our children's children may be free from the curse of war, but if ever the time should come when the spectre of 1914 should again appear I believe it would be best, not only that Parliament should be called, but the decision of the Government, which, of course, would have to be given promptly, should be submitted to the judgement of the people at a general election before troops should leave our shores. This would contribute to the unity of our country in the months to come and would enable us best to do our duty. It would not mean delay. Under the stress of war delay might be fatal. Let me make clear what I mean. The Government would have to decide and decide quickly what was best in the interests of Canada.'

'The Government would have to act on its judgement, but before there was anything in the way of participation involving the dispatch of troops, the will of the people of Canada should first be obtained. I have myself not the slightest fear but that if danger threatened Canada again, this country would respond as it responded in 1914, but I believe in future it will be best for all that before a Government takes a step so momentous as the dispatch of troops the will of the people should be known. Canada wants peace, the whole Empire wants peace, and our policy will be directed to that goal. Never at any time have I spoken words conflicting with the sentiments uttered to-night. I have spoken as I have just to make clear how unmerited are the allegations which for political purposes have been hurled at my head. I believe the sentiments I have expressed are shared by Canadians in all provinces.'

(b) *C. H. Cahan on the Hamilton Speech.*

(*Montreal Gazette*, December 9, 1925.)

Toronto, December 8. 'Experience has shown that efforts to adjust, without due consultation and consideration, serious questions of public policy, frequently serve to invite future dissensions,' C. H. Cahan declared in reference to the statement of Right Hon. Arthur Meighen at Hamilton, when the Conservative leader declared that Canada would not participate in any future war until a vote of the people could be taken on the question. Mr. Cahan, who is Conservative

M.P.-elect for the St. Lawrence-St. George division of Montreal, made this statement to the Conservative Business Men's Club here to-day.

'It may be that the personal policy which Mr. Meighen recently announced at Hamilton and more recently at Bagot may turn the tide of local sentiment,' Mr. Cahan said. 'But, speaking personally, with a quite intimate knowledge of the views and sentiments which generally prevail in the province of Quebec, I do not believe that the Hamilton pronouncement will be regarded either in Quebec or in the other provinces of Canada as binding upon the conscience and judgement of the Conservative party as a whole, or as controlling the discretion of Parliament whenever grave international complications may arise in the future. Nor do I believe that such a pronouncement made by a political leader, however able and esteemed he may be, will serve to remove permanently the estrangement which at present exists between Quebec and the majority of the provinces outside of Quebec.'

Mr. Cahan asked if it was not clear that Quebec Conservatives, intimate with the sentiments of the French-speaking people, should be allowed to express frankly their opinions in the councils of the Conservative party, so that Conservatives of every province could unite on a common platform to devote for one term at least of the House of Commons all their combined intelligence to the serious problems confronting the Canadian people.

(c) *Comments on Party Leadership.*

(*Willison's Monthly*, November, 1927, pp. 203-5.)

The Conservative Convention is over. A permanent leader has been elected and a platform adopted and, it is to be hoped, a decision reached that hereafter the party will return to its traditional path and leave decision on both questions to its elected members in Parliament. Not that the Convention did badly in either regard. The new leader would grace any political body, and the platform has been drawn with an eye to eventualities which should win the admiration of the most astute politician. But the Convention proved conclusively that there is an emotional temper in politicians, as there is in the rest of humanity, that is not conducive to sound judgement.

It was a fine thing to ask Hon. Arthur Meighen to address the party that he had led so long and with such distinction. It was a fitting tribute to the man just as it was a becoming gesture from a great political body. But it was not good that an issue which has been the despair of Conservatives for over two years should have been revived in the political *apologia pro vita sua* of a leader as tenacious of his own opinions as he is indifferent to the protests of his party.

Before Hon. Arthur Meighen made his famous Hamilton speech, representative men in the Conservative party pleaded with him not

to do so. He made the speech. It was followed by an immediate storm of protest. All over the Dominion a great body of influential Conservative opinion was incensed at his proposals. Indignation found expression in telegrams and letters of protest to Mr. Meighen, to leaders in his party, to private Conservative members, and to the Conservative press. Blunt and angry words were spoken in caucus. Out of consideration for the party, such protests were not made public. The Conservative press—almost without exception—refrained from expressing its condemnation. It was felt that Mr. Meighen had blundered, but his services to the party had been of such a signal character that there was a tacit agreement that there should be no public repudiation of his Hamilton proposals but that the matter should be allowed to rest in the hope that it would be buried in oblivion. The proceeding was somewhat reminiscent of the ostrich burying its head in the sand and, of course, Liberal politicians were quick to make political capital out of the event in British constituencies all over the Dominion—but there was a patient loyalty about the business that was not without its splendid side.

The reward for this restraint was Mr. Meighen's Winnipeg address. He did not come before the Convention as one harbouring grievances or complaints. He did not come as a former leader of Conservatism in Canada. He came 'as a private citizen' and as such, before the first great public convention of the party he had led so long, he revived his Hamilton speech. In respect to that speech, he said:

'It surely is true that I have suffered from a grievous misunderstanding, in some cases I must say a grievous misrepresentation, both as to its meaning and its scope.' His purpose was 'to make both clear'.

Mr. Meighen then reiterated his Hamilton speech, making it perfectly clear, as it had been clear in the first instance, that he proposed in the event of another war involving Canada that Canada's position should be determined not by Parliament but by the voice of the people as expressed in a general election. His own words were:

'I do not anticipate that we in this generation will ever be called upon to take part in a war again; but if ever the time should come when the spectre of 1914 would again appear, I believe it would be best not only that Parliament should be called, but that the decision of the Government, which, of course, would have to be taken promptly, should be submitted to the judgement of the people at a general election before troops should leave our shores.'

The remarkable feature of the occasion was not Mr. Meighen's speech, not the fact that he thought the best time to introduce such a contentious issue was at a great national convention of the Conservative party, not the fact that he introduced it knowing the arguments he presented were anathema to the Conservative party at large—but the reception accorded the speaker and his sentiments by some 1,600 delegates, together with other hundreds of alternative delegates

and supporters. A convention that was supposed to be representative of Conservatism did everything but endorse a proposal as alien to Conservative tradition as free trade.

Never since Sir John Macdonald has the Conservative party had such reason to rejoice in the presence of one man as the Conservatives of Canada have to be thankful to Hon. G. Howard Ferguson, Premier of Ontario. Without him there might have been no public objection to the Hamilton speech; and in politics, as in other human affairs, not to object is to accept. It would have been a startling denouement. The Conservative party personified going to Winnipeg rejoicing that 'a British subject I was born, a British subject I will die' and returning with the reservation 'but only after a general election'.

The situation was impossible. Mr. Ferguson was apparently the only man with the courage to bring the Convention to its senses, and the reception he received was sufficient indication of the state of mesmerism to which this supposedly representative body had been reduced by the unusual eloquence of Mr. Meighen's 'explanation'.

It is contended in some quarters that Mr. Ferguson was not as considerate as he might have been, that he was too blunt in his speech, that he went too far when he said that if any such policy was endorsed by the Winnipeg Convention he would 'dissociate himself from the Convention no matter what happened'.

The time was not one for polished speeches. It was a critical moment in Conservative history, as critical as any in its history. Since 1914, the Conservative party has been committed to certain policies utterly foreign to itself. These policies include:

The demand for 'equal status' at Versailles.

The demand for separate representation of the Dominions in the League of Nations.

Insistence upon a clearer constitutional definition of the relations between the Dominions and the Mother Country.

The demand for a voice in British foreign policy.

Insistence upon the right of the Dominions to refuse assent to Imperial treaties.

The declaration of the House of Commons against acceptance of the King's titles of honour.

Appointment of a Canadian Minister to Washington.

These policies are as foreign to traditional Conservatism as they are natural to Liberalism. To add to them the Meighen policy of Ballots before Bayonets would be to crown as curious a series of political inconsistencies as there is even in the history of Canadian politics. Further than that, it would be to commit the Conservative party finally to a course which would assuredly alienate thousands upon thousands of followers, as it alienated many thousands in the last federal campaign.

What a mesmerized convention could not see, Mr. Ferguson saw.

He saved the Convention. Indeed, it is a question if it would be an exaggeration to say that he saved his party. The Conservative press, not hypnotized as were the Conservative representatives, are under no delusions as to the importance of the repudiation. The *Winnipeg Tribune*, writing of the clash in the convention, said editorially, the day after the incident:

'Who threw the brick? Responsibility is divided between Arthur Meighen who delivered a boldly provocative speech and Howard Ferguson who delivered what in some quarters is regarded as a tactless speech. Ferguson's speech was without doubt lacking in tact. But it was a manly speech, so much so that an unbiased observer listening to it and understanding the background might have said in the words of Catherine de Medici, "Now God be thanked, for I have seen a man this day."

'Again, who threw the brick? The *Tribune* is not in the habit of mincing words, and it does not propose to mince them now. Arthur Meighen threw the brick. He threw it not in an unguarded moment or in the heat of battle, but in cold-blooded deliberation, knowing as he must have known its inevitable repercussions.'

To its own question, 'Why did Mr. Meighen wait for two years to defend his Hamilton speech?' the *Tribune* replies: 'Mr. Meighen waited for the Conservative National Convention, the occasion of the Conservative party's endeavour to compose its differences, close its ranks, and embark on a programme of unity in the public service. His self-appointed mission was to divide where others were trying to unite. He succeeded fairly well.' The editorial continues: 'The *Tribune* will not insult the intelligence of its readers by arguing the merits of the Hamilton utterance. . . . The truth of the matter is that the Hamilton speech destroyed a considerable portion of the foundations upon which the Conservative party is built. It was, as Howard Ferguson said, a sop to Bagot. It failed and deserved to fail, not only in that critical by-election but in the general elections last year. It was a political blunder of the first order. But Mr. Meighen never blunders. He is one better than the Sheriff of Nottingham who admitted one mistake.'

'And so he went before the Convention yesterday to win or hope to win at the expense of serious party division endorsement of a speech that should at the time have cost him his leadership.' And here follow the most significant sentences of the editorial: 'He very nearly got it, not in direct terms but in the outburst of party sentiment, expressed for a former chief who, fighting not always wisely, had nevertheless fought well for the Conservative party. Howard Ferguson saved the day, saved the Conservative party from the disgrace of silent acquiescence in a defence of the Hamilton speech. Whether it is to be a temporary or a permanent salvation remains for the Conservative Convention to say.'

It is to be noted that this is not the view of a Toronto Conservative paper but of a Winnipeg one. It confirms what has been heard for the past two years of Western resentment over the Hamilton speech. The language is as blunt as Mr. Ferguson's.

The *Montreal Star*, while deprecating Mr. Ferguson's outspokenness, declared: 'Premier Ferguson said no more than hundreds, if not thousands, of his leading associates in the party have been saying ever since 'Hamilton' and 'Bagot'. The Hamilton policy has long been condemned as a practical programme and as 'practical politics' by the very people it was meant to win. It is not a live issue.'

A score of such editorial utterances could be quoted from the Conservative press.

It is to be hoped that the Conservative party is free, once and for all, not only of the Hamilton speech but of the influences that in a decade have led it so far from its historic path.

III

REVOLTS AGAINST THE OLD PARTIES

A. THE REVOLT OF 1917

(*Manitoba Free Press*, July 9, 1917 (editorial).)

There seems to be a tendency to regard recent developments at Ottawa as altogether temporary and exceptional. It would be nearer the truth, perhaps, to say that they indicate a return at last to sound democratic orthodoxy.

The second reading of the Military Service Bill has driven a coach and four through both the traditional political parties of the Dominion. There have been occasions since confederation when a professional politician has been hard put to it to find enough political fodder to keep his own particular hobby alive. During the past three years, particularly, the perpetuation of old political distinctions has been not only meaningless but indefensible. Political parties have been busy trying to manufacture distinctive policies. It is now a sign of better things that policies begin to determine potential political parties. The former tendency is an indication, to say the least, of political stagnation. It means that the capacity for sound, practical expediency, which was responsible for evolving the forms of party government in the first place, has fallen into abeyance, leaving the empty forms of party government open to endless perversion. A regrouping of political parties with a new orientation with regard to the new issues that are already beginning to emerge will not mean a new heaven and a new earth; but the reasons seem fairly obvious why it is likely to mean the beginning of a new era in the political history of Canada.

In the ideal democracy, no doubt, every elector would be alert and invariably responsive to the claims of citizenship and of duty. Failing that, a measure of honest and thoughtful interest in almost any form is better than no thought and no interest at all; and it can scarcely be considered a misfortune if that interest is legitimately stimulated even by adventitious means. Other things being equal, therefore, the dominance of vital issues as distinct from the stupid traditional party allegiance of the past, is a step in the right direction; not because, in a vigilant and well-informed electorate, a continuity of such issues is necessarily essential for the health and well-being of the state, but because even in the absence of that vigilance and non-partisanship, a vital issue may serve at least to focus the interest of the electorate upon the political condition of the country. In that sense the virtues of an acute issue in politics correspond to the virtues, if so they may be called, of a great national emergency in war. In no other way perhaps would humanity have been raised out of sloth and self-indulgence to the plane of duty and self-sacrifice displayed in the throes of this devastating struggle. And just as one of the problems of the human race is to evolve a moral equivalent for war, so one of the most serious problems of a democracy is to evolve a moral equivalent for acute political issues in order to keep an electorate alert and responsive to the work-a-day duties of citizenship. It would seem to be necessary in a very large measure to solve both these problems before the civilization to which democracy now professes to aspire can be considered to be at all practically attainable.

Meanwhile the affairs of men are not to be regulated by counsels of perfection; and a vote on the second reading of the Military Service Bill may come to be regarded as a very significant landmark of political progress in Canada. It now seems reasonably certain that Canadian politics will be dominated for many years by very important and vital issues; which is another way of saying that Canadians will think more about their politics than they have ever thought before. They may not always think very discerningly or act invariably upon principle, but they will be compelled at least to think more intently and to act under a deeper sense of national responsibility. That prospect is not without one or two dangerous, if not sinister, possibilities. It may be that the lines of party may follow racial or other cleavages in such a way as seriously to divide the nation. At any rate, however, we may hope to be extricated from the Slough of Despond and fight out our issues on solid ground; and if intelligent non-partisanship was never more essential for the nation, this much may at least be said, that there has never been so hopeful a probability that intelligent non-partisanship would be forthcoming.

That does not mean that men will dispense with deep convictions or with spirited action—quite the reverse in fact—but it does mean that a beggarly partisan allegiance founded upon self-interest or upon

ignorance will no longer determine who is to control the destinies of this Dominion. Let us have as much political conviction as we please, and as little partisan complacency as possible. That frame of mind will require careful discrimination. It would be very superficial to identify a placid and colourless neutrality with non-partisanship. It would be no less superficial and infinitely more dangerous to identify abject and sedulous partisanship with conviction. If the average elector can free his mind from the trammels of blind partisan allegiance, and can concentrate his attention not upon parties as such, but upon measures and the men who are best fitted to carry them out, there is likely to be in the political future of Canada for many years to come that which should raise the level of politics and public life above anything which the present generation in Canada has ever known.

B: THE REVOLT OF THE PRAIRIES

I. THE FORMING OF A NEW PARTY

(*Manitoba Free Press*, July 28, 1919 (editorial).)

The significance of the farmers' convention, just held at Calgary, will not be realized by those who have not been following the movement in the farmers' organizations for political action.

The action at Calgary means that there has been brought into existence in Alberta a new political party, under its own leaders and with a defined and radical policy. It is not subordinate to the great farmers' organizations through which the political desires of the farmers have heretofore been voiced. It is a distinct organization 'on its own'.

This separation of the farmers' movement into two organizations—one business and fraternal under the title of the United Farmers of Alberta, the other political under the name of the Farmers' Political party—has been by agreement.

The regular farmers' organizations—the U.F.A. in Alberta, the grain growers in Saskatchewan and Manitoba—have been active for years in formulating political opinions by the discussion of public questions and the drafting of platforms, but they have been reluctant to embark upon political action; they have, quite obviously, feared the reflex effect of such action upon the harmony of the associations themselves and upon the operations of the great business interests which have grown up under their encouragement.

These associations could not continue to advocate political policies with an accompanying criticism of existing political parties as inefficient or corrupt without creating a demand among the membership for independent political action that would prove irresistible. This has now come to pass. In Alberta the U.F.A. has called the

new Farmers' Political party into existence, given it its blessing, and started it off along the political highway.

The party was brought into being in Alberta in this manner: The U.F.A. called conventions for each federal constituency. At these conventions, made up of members of the U.F.A., a decision was reached actively to participate in politics, both Dominion and provincial. In each constituency an executive was created to take charge of the political movement. A convention of these executives was then called to meet at Calgary and at this convention, which was held during the past week, a distinct political party was formed with its own leaders and its own executive. No doubt the membership of the new party and of the U.F.A. will be, at least at the outset, pretty nearly identical, but there are bound to be divergences as each organization takes its own road. Presumably in the future the political views of the farmers in Alberta will be expressed through the party and not by the agency of the U.F.A. conventions—a fact which may detract somewhat from the interest of these gatherings in the future.

A similar procedure is being followed in Saskatchewan. In that province, at a series of conventions held at the call of the grain growers' associations, a uniform decision to go into politics was reached and executives formed to give effect to that decision. These executives are to meet in Regina on July 31 to organize a provincial-wide political movement for Dominion and, presumably, for provincial political purposes.

There were some very significant features about the Calgary convention. For one thing the gathering defined itself sharply as a class movement by adopting the name, the Farmers' Political party. The proposal to make the insurgent farmers the nucleus for a radical third party with a wider appeal appears to have had no friends in the convention. Another highly suggestive fact is that the convention when it came to deal with policy did not content itself with reaffirming the Farmers' Platform put forward by the Canadian Council of Agriculture but proceeded to develop some decidedly radical propositions off its own bat. The new organization thus, at the very outset, revealed one characteristic which marks all parties: a readiness to modify or amend policy in response to pressure.

Saskatchewan will presumably follow the course already taken by Alberta. It will organize a political party divorced from all official connexion with the Grain Growers' organization; and it will formulate the policy desired by its membership. No doubt there will be, later on, a fusion between the Alberta and Saskatchewan parties. If the first objective is the capture of seats in the Dominion Parliament it will be necessary for them to get together and present a united front; and if the movement in Manitoba, which is only beginning, grows to any proportions it will no doubt get into line also.

The western provinces are evidently going to see an agrarian

political movement on a scale hitherto unknown in Canada. The farmers appear to be quite impartial in their hostility to existing governments, irrespective of the label they wear. In Alberta they have nominated a candidate for the vacancy in Cochrane in opposition to the provincial Liberal Government; while in Saskatchewan they are the first in the field in the Dominion constituency of Assiniboia, where a by-election impends. The development is a matter of concern to all existing political organizations and their leaders: and perhaps especially to the Governments of Alberta and Saskatchewan who have in the past received much of the political support which is now being deflected into these new channels.

2. THE FARMERS' MOVEMENT

(O. D. Skelton in *Queen's Quarterly*, January, 1920, pp. 326-7.)

The event of the year in Canada has been the growth of the organized farmers' movement. From an economic movement it has become political; from building a political platform the farmers have gone on to establish a political party. The movement was probably inevitable. It is in harmony with a world-wide emphasis upon economic groups. From working together in business it was an easy next step to work together in politics. Personal ambitions played a part. But it was undoubtedly the break-up of the old parties caused or occasioned by the War that proved the deciding factor: the field was inviting, the bars were down, and the new party wandered in.

The farmers' movement has been condemned as a class movement. There is need for discrimination here. It is not a class movement in its platform. The platform may rightly claim to be a New National Policy in that it makes appeal to men of every occupation and every section, and seeks no special favours for farmers or for any other class. It may be wise or unwise in some of the means it proposes, but it seeks no privileges—and refuses to grant any.

It is, however, at present a class movement in membership and control. Aside from the adherence of small towns in solid farming areas of the west, its strength comes as yet wholly from the country voter. What it will become in the future depends upon the relative strength of contrary tendencies within the movement itself, as well as upon the attitude of the older parties. There is one tendency in the movement which looks to retaining the exclusive farmer basis and to making the new party an instrument for advancing the farmers' economic interests. One evidence of this tendency is seen in the attempt to secure from a candidate for Parliament his resignation in advance, thus making him the mere 'hired man' of the local farmers' organization, a procedure as fatal to the hope of securing able and independent representatives as to the prospect of securing any outside support. There is much precedent in the world for such-

a distinctly class aim, but the results are not of happy augury. It would be deplorable if a division on lines of economic classes became the permanent basis of our political life. True, it is not open to those who have supported the old régime to talk of class movements, seeing that for forty years the country has followed the policy of building up industrial at the expense of agricultural interests and made the economic privilege of the protected manufacturer a sacred and patriotic dogma. Yet two class dogmas do not make a right, and rule by single clean-cut classes or by unstable and log-rolling combinations of classes is not in the country's interest.

The other tendency is much more idealistic, and fortunately is the policy of the biggest men in the movement. These men look upon themselves not as champions of a class but as upholders of a broad democracy. They urge organization of the farmers, partly, it is true, to secure what they consider justice for themselves, but mainly to secure justice for all men. They are eager for the support of men of every occupation, and look to the gradual widening of the farmers' movement into a people's movement. This tendency is decidedly the stronger, and as long as it continues strong renders baseless the fears of class domination. The widening may come by the inclusion of urban individuals in the ranks of the present farmers' parties. Or, as is more probable, it may come by the alliance and eventual coalescence, in Parliament, if not in the electoral contest, of the farmers with other progressive groups.

3. THE FARMERS' GROUP IN POLITICS

(E. J. Garland, M.P., in *Canadian Forum*, June, 1926, pp. 270-2.)

The organized farmers of western Canada decided to enter the arena of practical politics when they had become convinced that neither of the old parties understood their view-point, and therefore could not represent it even if either of the parties were sincerely sympathetic to it.

In order that the present position of the farmers' movement may be more fully understood, it is necessary for the writer to indicate that although at this stage of its evolution there is reasonable unanimity on legislative objectives, there has been a very distinct cleavage of opinion on the form of the political organization.

It would appear that the farmers of Saskatchewan and Manitoba and most of those of Ontario entered politics for but one purpose, to secure the enactment of a certain programme of legislative measures and reforms calculated to improve the position of the primary producers. This programme was drafted by the Canadian Council of Agriculture, is known as the New National Policy, and directly reflects the political desires of the agricultural class. The organized farmers of each of the provinces endorsed the programme and

proceeded to initiate the political movement. In the three provinces mentioned this movement was not confined to the agricultural class. Constituency organizations were established in the formation and activities of which the farmers went outside their own industrial organization, with the result that the purely agricultural nature became quickly diluted, and the political detached itself from, or was detached by, the industrial.

Mr. Morrison and some notable supporters like Miss Agnes Macphail, W. C. Good, and Preston Elliott of Ontario, resisted this process of dilution, but were unfortunately too few at the time to overcome the deep-rooted 'political party' aspirations of Mr. Drury and the majority of the farming people in that province. No resistance to this dilution was evidenced in Manitoba or Saskatchewan. It is only fair to say in passing that the lesson learned in the past four years has definitely convinced the organized farmers in these provinces that some more stable form of organization will be necessary to future success. Alberta is so far the only province in which the organized farmers' political movement is clearly and completely identified with the industrial.

When considering the necessary steps to political action we had before us the failure of all the previous political efforts of the farming peoples, not alone of Canada but of other countries also. We determined that if the lessons of the past could teach us anything our movement should not be wrecked on similar rocks, and so decided to attempt what is in Canada an entirely new form of political organization. This is now known by many names, among which occur 'Economic Group', 'Industrial Political Action', &c. It is not only based upon the industrial organization; it is the industrial organization taking responsibility for the political activities necessary to ensure the fuller realization of our economic aims and ideals. In addition it has for its motivating force the political philosophy of our movement. Once we had definitely decided on our objectives we found ready to hand the complete political organization necessary, and at the annual convention of 1919 simply delegated to the U.F.A. Locals in each federal constituency the necessary powers to take adequate steps to collect funds, to call conventions, to nominate candidates, and in short to carry out all political activities. When the election storm of 1921 had passed we found that we had not only succeeded in intelligently organizing our collective voting strength and bringing to a common cause all those farmers who saw therein their political emancipation, but also found that having once reached a solid basis for action ourselves it was not difficult to co-operate with other groups organized on a similar basis, even though all the political aspirations of these might not coincide with our own. As a result we had elected not only our own representatives, but also assisted materially the Independent and Labour Organizations to elect theirs.

Subsequently, through the four years of parliamentary activity from 1921 to 1925, the effective co-operation already brought about between the Labour and Farmer organizations was reflected in the close and sympathetic understanding between the Labour and Farmer groups in the House of Commons. This has continued with marked success, and to-day one may observe the considerable influence these groups collectively possess in Parliament.

It was not, however, until October, 1925, that we became definitely certain that citizenship organization was capable of maintaining its intelligence and so its strength. The years 1921 to 1925 had witnessed considerable diminution of the active membership of the movement. This may be said to be due in part to the withdrawal from it of those who were influenced more by the psychological effect of the political enthusiasm of 1920 and 1921 than by reasoned conviction, due in part to the slackening of interest following the successful accomplishment of the tremendous task of meeting the organized political machines and without financial resources or political experience defeating them, and in part to the disastrous years of drought following the transference of the energies of the whole movement to the new task of organizing our selling powers through the establishment of commodity pools. This latter alone would account for the apparent weakness of the parent organization. In these activities Alberta leads the way.

Following the failure to secure a State Wheat Pool in 1922, every ounce of energy was directed towards the gigantic task of organizing our basic product, wheat, and erecting the most effective selling machinery by which we who grew it might also sell it intelligently. Within little more than one year we had established the Alberta Wheat Pool, which commenced the actual handling of wheat in September, 1923. Manitoba and Saskatchewan speedily followed our example. In 1924 co-operation was established between three distinct provincial pools, and to-day there exists in Western Canada the most ambitious and successful co-operative wheat-selling agency in the whole world.

When the elections were announced last summer the farmers were not only busily perfecting this immense enterprise, but were also organizing others of a like nature. The live-stock pool was in process of formation and was launched last autumn. The dairy products pool and the egg-poultry pool were also being formed. In spite, however, of the drain upon our energies caused by these various activities and in spite of the fact that threshing was in full swing, on election day the farmers' movement in Alberta hurled back the reactionary tide that swept the other provinces and emerged with only one farmer member lost. Even this loss may be but a temporary one. So we are now fair in assuming that wherever the farmers preserved the identity of their movement, and did not weaken it by permitting

the entrance of discordant forces, they have succeeded in resisting the power of autocratic political machines.

In passing it is worth noting that with but one exception every member of Parliament, whether from Alberta or other provinces, who remained true to the economic basis of political representation during the four years, 1921 to 1925, and stood for election was returned last October.

As far as the Alberta movement is concerned political action implies two objectives. First, the establishing of a new political order under which intelligently organized citizenship will undertake to function politically instead of leaving the power of the election of candidates, the financing of them, and their ultimate control as members of Parliament in the hands of the few who dominate the political party machines.

Lord Balfour of Burleigh has written that the curse of our political life is the domination of 'the party system'. We desire to do our share as one organized citizen unit in the Dominion to help other citizen units to come into existence and so dissolve this dominant evil.

Our second objective is legislative. In this field it is to be remarked how closely we find ourselves allied in our objective with the professed aims not only of the other Independent Groups, but even of both old parties. The writer has read with deep interest the articles preceding this one by W. F. Maclean, M.P., and J. S. Woodsworth, M.P. So far as the view-point expressed by Mr. Maclean, the well-known and respected Conservative from North York, is concerned, we are in almost entire agreement. We have always believed in public ownership, or public control, of all great public utilities. We would go with Mr. Maclean to the extent of nationalizing the coal-mining industry of the Dominion, and are satisfied that until some state control of this industry is undertaken there is little hope of a permanent solution of our Maritime problem. . . .

Let us consider now the practical results. During the past four years the delegates of the economic groups, whether independent, labour, or farmer, fought vigorously in the House for (amongst other matters) certain needed branch lines, banking reforms, Government inspection of banks, revaluation of soldier-settlers' lands, agricultural credits, removal of duty on automobiles, statutory rates on grain, recognition of the moral claim of Home Bank depositors, and an independent investigation into coal carrying costs so as to establish a cost rate. The successful results of these efforts are now either matters of history or current legislative enactment.

Our immediate objectives include revaluation of the whole C.N.R. system, and the writing down of its capital to the present physical valuation of the property. If this were done, placing our nationally owned railroad on a relative basis to that enjoyed by the C.P.R., the annual deficits of the C.N.R. would disappear. The establishment

of a fairer method of recording the popular will at election is sought in our request for the application of the Single Transferable Vote. Modification of the fiscal policy calculated to reduce the cost of living, improve the purchasing power of our people, and increase trade is urgently needed. Reform or abolition of the Senate must sooner or later be effected if our democratic institution, Parliament itself, is to continue to exercise its full powers. Recognizing that the obligations of the State to the individual is no less than that of the individual to the State, we seek economic reforms that will not only give to every adult the right to productive employment, but will provide it for him. We believe also that it is essential to our future progress as a nation that, although there arises almost a constant stream of problems—State, legislative, economic, and social—it must be recognized and acknowledged that these problems are capable of satisfactory and permanent solution only through the intelligent organization of our people, on a firmer and more logical basis than that of mere political partyism.

The great inspiration then that we have to offer the people of Canada is that of our own example. Organize on any basis that you are able, but organize. Study your social, economic, and political questions collectively and, having crystallized your deliberations into conclusions, we will find common ground for co-operation between the various social and citizen groups, and so through intelligently collective action make it possible for the people of Canada to rule themselves by reason and not be led astray by political confusion.

4. THE SPLIT IN THE PROGRESSIVE PARTY

(Cf. Chapter IV, section IV, B.)

C. RADICAL POLITICAL MOVEMENTS IN CANADA

(Frank H. Underhill in *Canadian Forum*, May, 1929, p. 270.)

. . . In practical politics the only radical movement which has made much impression for any length of time was that of the Grit party in Upper Canada under George Brown. The Grit movement got all its force from the fact that it embodied the protest of the then Western Canadian farmer against exploitation by the big business interests of Montreal. It found natural intellectual leaders in some of the ablest men in Toronto as long as Toronto remained chiefly the distributing centre for Upper Canada agriculture, just as the contemporary farmers' movement on the prairie has found similar leadership in modern Winnipeg. Wherever Brown got his education, he had thoroughly mastered the doctrines of the philosophical radicals and of the Manchester school; and in the pulpit of the *Globe* he preached them for a generation to 'the intelligent yeomanry of Upper Canada'. His understanding of economics saved Grittism from the

heresies of soft money over which most of the agrarian movements of the United States then and since have gone to their ruin. In 1867, after a long uphill struggle, he thought that at last the farmers of Upper Canada had reached the point where they would play their due part in Canadian public life. But after confederation Grittism gradually went to seed. The best of the young farmers emigrated to the new West or went into the cities to make money. The Grit party degenerated into a clique of office-holders under Mowat at Toronto fighting for political spoils with another clique of office-holders under Macdonald at Ottawa. The prophetic fervour of Brown in the *Globe* was succeeded by the urbane scepticism of Willison, and this in turn has been replaced by the fundamentalist twaddle of the present management. The whole intellectual history of Ontario is summed up in the evolution of the *Globe*.

Agrarian radicalism has come to life again in our time in the new West. No one who has read the *Globe* of the 1850's and 1860's can fail to be struck by the remarkable similarity between the ideas of the Western Progressive farmer of to-day and those of the Western Grit farmer of two generations ago.

With the Grand Trunk and the Bank of Montreal at his back there is no saying how far the reckless financier of the present Government may carry his schemes. These institutions are the enemies of the people and of popular rights. They have special interests to advance in Parliament. It is time that Western Canadians were united together in resisting these monopolies and the Government which has created and supported them. It is time that we had a Government above being the servant of railway or banking institutions. It is time that we had a Government which would consider the interest of the whole people and not of a few wily money-makers who can bring influence to bear upon Parliament.

These words are from an editorial of the *Globe* in 1867 in the midst of the first general election of the new Dominion. They might have been taken almost without change from the present-day *U.F.A.* or *Western Producer*. They might even almost have been taken from a speech by the leader of our modern Tory Democracy, Mr. Church. They are as true to-day as in 1867 and they are likely to be as ineffective.

But the twentieth-century Western farmers have gone beyond the Grit model in building up not merely a political but also an economic organization of their own. All experience goes to show that the little man on this continent will never count for much until he organizes with his fellows and by union becomes powerful enough to hold his own with banks and middlemen and railways and manufacturers. His voice will not be listened to in politics until it is listened to in business. So, for those who still have faith in democracy, the Wheat Pools and the U.F.A. are the most encouraging things that have happened in this country since the C.P.R. was built. Our Western

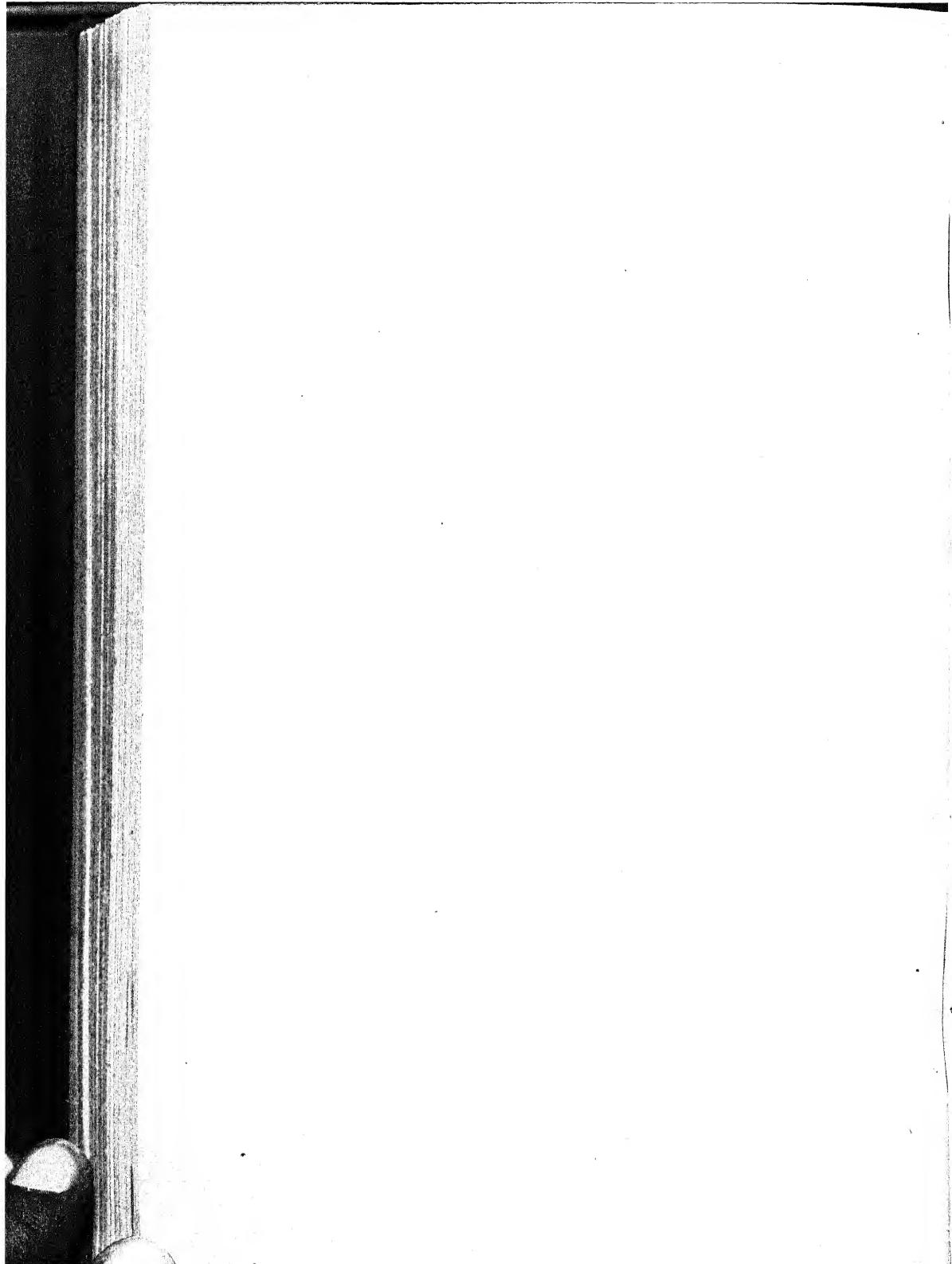
Canadian farmers seem to have broken the spell which has been laid upon all agrarian movements in Eastern Canada and the United States. They seem to have emerged from all that long period of futility which south of the international boundary stretches from the Granger movements to the mass voting for Hoover and higher tariffs. They still show too much jealousy of leadership and too much of that insatiable passion for quarrelling with one another which has been the curse of all farmers' movements. But here, as in other matters, Alberta has shown the way to a better method of doing things.

The other source from which one might expect an organized radical movement in Canada is, of course, Labour. But Canadian labour, like Canadian capital, meekly follows American leadership. Mr. Woodsworth's party remains purely sectional and western. In the East the worker must choose between the supine inactivity of his orthodox Trade Union officials and the ridiculous antics of a few wind-bags who call themselves communists. Eastern Canadian Labour has no higher ambition than to pick up the crumbs which fall from Dives' table. It accepts gratefully the benevolent paternalism of the employing classes which holds out to it the promise (but not the guarantee) of high wages and continuous employment; and, if the promise isn't fulfilled, it attributes the hard times to Providence. It laps up the manufacturers' panacea of Protection as eagerly as country yokels used to take Peruna. The example of British Labour seems to have been entirely lost upon it. And any hopes of a farmer-labour alliance, which is the only political movement in this country that will ever be able to challenge effectively the monopoly of control now exercised at Ottawa by the big corporations, must be put off to the far-distant future.

But the real weakness of radicalism in this country is the lack of intellectual leadership. In Britain the movements of the left have always attracted the co-operation of many of the best minds of the country. The close relations of Bentham and James Mill with Francis Place and the other working-class leaders at the beginning of the nineteenth century have been paralleled in every generation of English history since then. To-day the Labour party swarms with young Oxford and Cambridge men. The most political of the Oxford colleges, in spite of its snobbish Jowett tradition, has a socialist as Master. And the London School of Economics supplies the party with ideas as openly and directly as it supplies it with cabinet ministers. At the same time the chief drive to revive the Liberal party and give it a twentieth-century mental equipment comes from the Cambridge economists. . . .

CHAPTER NINE

DOMINION-PROVINCIAL RELATIONS



DOMINION-PROVINCIAL RELATIONS

'When I use a word,' Humpty Dumpty said, in rather a scornful tone, 'it means just what I choose it to mean—neither more nor less.'

'The question is,' said Alice, 'whether you *can* make words mean so many different things.'

'The question is,' said Humpty Dumpty, 'which is to be master—that's all.'

Through the Looking-Glass.

CANADA is a federation; and no description of the central Government is complete without an account of the relations between the Dominion and the provinces. The first source to be consulted is, of course, the British North America Act, and sections 91-5 give in outline the powers which are assigned to each governing authority. But clauses in a written Constitution, no matter how meticulously they may have been drawn, prove to be inadequate in a struggle over legislative powers. The supreme statute must be defined, expanded, interpreted, and re-interpreted by judicial decisions; and hence the true nature of Canadian federalism is disclosed only through the long series of judgements which have been rendered by the Courts, and particularly by the Judicial Committee of the Privy Council (Section I).

Few federations give to the central authority the extensive powers enjoyed by the Dominion Government in Canada. This peculiarity finds expression in the generous grant to the Dominion of the enumerated powers in section 91, in the further grant to the Dominion of the residuary powers (though these have been greatly reduced by decisions of the Judicial Committee), and, most unusual of all, in the control allowed the Dominion over certain activities of the provincial governments. Under this last heading appear the power of the central Government to appoint and remove the lieutenant-governors in each province, and the right to disallow (subject to no statutory restriction) any enactment of the provincial legislatures. It is obvious that the possession of the powers last mentioned increases materially the authority of the central Government, and any extensive exercise of them would in a short time transform the provinces into large municipalities. The Dominion control of the lieutenant-governors, however, has been of the lightest kind, although interference has occasionally been charged, and two lieutenant-governors have been removed from

office by the Governor-General in Council. The power of disallowance, on the other hand, was freely used during the first thirty years of the federation, and it constituted at that time a serious menace to provincial legislative autonomy. Since then, however, the number of Acts disallowed has rapidly declined; but it is well to remember that this Dominion power is legally unimpaired, and the extent of its exercise rests on no more stable basis than the particular theory held at a given moment by the Minister of Justice or by the Cabinet (Section II). In recent years a new form of Dominion control not contemplated by the British North America Act has appeared, viz. the system of grants-in-aid to the provinces. These grants supplement the provincial subsidy and yet restrict the recipient to a specified object. The provinces are enabled to perform their ordinary work in certain designated fields, or, more usually, they are induced to initiate new work in the provincial sphere which they would not otherwise have undertaken, and which the Dominion has desired yet has lacked the power to carry out (Section III).

I

THE NATURE OF THE FEDERATION

A. THE BRITISH NORTH AMERICA ACT, 1867, SECTIONS 91-95

VI. DISTRIBUTION OF LEGISLATIVE POWERS

Powers of the Parliament.

91. It shall be lawful for the Queen, by and with the Advice and Consent of the Senate and House of Commons, to make Laws for the Peace, Order, and good Government of Canada, in relation to all Matters not coming within the Classes of Subjects by this Act assigned exclusively to the Legislatures of the Provinces, and for greater Certainty, but not so as to restrict the Generality of the foregoing Terms of this Section, it is hereby declared that (notwithstanding anything in this Act) the exclusive Legislative Authority of the Parliament of Canada extends to all Matters coming within the Classes of Subjects next hereinafter enumerated; that is to say,—

1. The Public Debt and Property.
2. The Regulation of Trade and Commerce.
3. The raising of Money by any Mode or System of Taxation.
4. The borrowing of Money on the Public Credit.
5. Postal Service.
6. The Census and Statistics.
7. Militia, Military and Naval Service, and Defence.
8. The fixing of and providing for the Salaries and Allowances of Civil and other Officers of the Government of Canada.
9. Beacons, Buoys, Lighthouses, and Sable Island.
10. Navigation and Shipping.
11. Quarantine and the Establishment and Maintenance of Marine Hospitals.
12. Sea Coast and Inland Fisheries.
13. Ferries between a Province and any British or Foreign Country or between Two Provinces.
14. Currency and Coinage.
15. Banking, Incorporation of Banks, and the Issue of Paper Money.
16. Savings Banks.
17. Weights and Measures.
18. Bills of Exchange and Promissory Notes.
19. Interest.
20. Legal Tender.
21. Bankruptcy and Insolvency.
22. Patents of Invention and Discovery.

23. Copyrights.
24. Indians, and Lands reserved for the Indians.
25. Naturalization and Aliens.
26. Marriage and Divorce.
27. The Criminal Law, except the Constitution of Courts of Criminal Jurisdiction, but including the Procedure in Criminal Matters.
28. The Establishment, Maintenance, and Management of Penitentiaries.

29. Such Classes of Subjects as are expressly excepted in the Enumeration of the Classes of Subjects by this Act assigned exclusively to the Legislatures of the Provinces.

And any Matter coming within any of the Classes of Subjects enumerated in this Section shall not be deemed to come within the Class of Matters of a local or private Nature comprised in the Enumeration of the Classes of Subjects by this Act assigned exclusively to the Legislatures of the Provinces.

Exclusive Powers of Provincial Legislatures.

92. In each Province the Legislature may exclusively make Laws in relation to Matters coming within the Classes of Subjects next hereinafter enumerated; that is to say,—

1. The Amendment from Time to Time, notwithstanding anything in this Act, of the Constitution of the Province, except as regards the Office of Lieutenant-Governor.

2. Direct Taxation within the Province in order to the Raising of a Revenue for Provincial Purposes.

3. The borrowing of Money on the sole Credit of the Province.

4. The Establishment and Tenure of Provincial Offices and the Appointment and Payment of Provincial Officers.

5. The Management and Sale of the Public Lands belonging to the Province and of the Timber and Wood thereon.

6. The Establishment, Maintenance, and Management of Public and Reformatory Prisons in and for the Province.

7. The Establishment, Maintenance, and Management of Hospitals, Asylums, Charities, and Eleemosynary Institutions in and for the Province, other than Marine Hospitals.

8. Municipal Institutions in the Province.

9. Shop, Saloon, Tavern, Auctioneer, and other Licences in order to the raising of a Revenue for Provincial, Local, or Municipal Purposes.

10. Local Works and Undertakings other than such as are of the following Classes:

(a) Lines of Steam or other Ships, Railways, Canals, Telegraphs, and other Works and Undertakings connecting the Province with any other or others of the Provinces, or extending beyond the Limits of the Province:

- (b) Lines of Steam Ships between the Province and any British or Foreign Country:

Such Works as, although wholly situate within the Province, are before or after their Execution declared by the Parliament of Canada to be for the general Advantage of Canada or for the Advantage of Two or more of the Provinces.

11. The Incorporation of Companies with Provincial Objects.
12. The Solemnization of Marriage in the Province.
13. Property and Civil Rights in the Province.
14. The Administration of Justice in the Province, including the Constitution, Maintenance, and Organization of Provincial Courts, both of Civil and of Criminal Jurisdiction, and including Procedure in Civil Matters in those Courts.
15. The Imposition of Punishment by Fine, Penalty, or Imprisonment for enforcing any Law of the Province made in relation to any Matter coming within any of the Classes of Subjects enumerated in this Section.
16. Generally all Matters of a merely local or private Nature in the Province.

Education.

93. In and for each Province the Legislature may exclusively make Laws in relation to Education, subject and according to the following Provisions:—

(1) Nothing in any such Law shall prejudicially affect any Right or Privilege with respect to Denominational Schools which any Class of Persons have by Law in the Province at the Union:

(2) All the Powers, Privileges, and Duties at the Union by Law conferred and imposed in Upper Canada on the Separate Schools and School Trustees of the Queen's Roman Catholic Subjects shall be and the same are hereby extended to the Dissident Schools of the Queen's Protestant and Roman Catholic Subjects in Quebec:

(3) Where in any Province a System of Separate or Dissident Schools exists by Law at the Union or is thereafter established by the Legislature of the Province, an Appeal shall lie to the Governor-General in Council from any Act or Decision of any Provincial Authority affecting any Right or Privilege of the Protestant or Roman Catholic Minority of the Queen's Subjects in relation to Education:

(4) In case any such Provincial Law as from Time to Time seems to the Governor-General in Council requisite for the due Execution of the Provisions of this Section is not made, or in case any Decision of the Governor-General in Council on any Appeal under this Section is not duly executed by the proper Provincial Authority in that Behalf, then and in every such Case, and as far only as the Circumstances of each Case require, the Parliament of Canada may make

remedial Laws for the due Execution of the Provisions of this Section and of any Decision of the Governor-General in Council under this Section.

Uniformity of Laws in Ontario, Nova Scotia, and New Brunswick.

94. Notwithstanding anything in this Act, the Parliament of Canada may make Provision for the Uniformity of all or any of the Laws relative to Property and Civil Rights in Ontario, Nova Scotia, and New Brunswick, and of the Procedure of all or any of the Courts in those Three Provinces, and from and after the passing of any Act in that Behalf the Power of the Parliament of Canada to make Laws in relation to any Matter comprised in any such Act shall, notwithstanding anything in this Act, be unrestricted; but any Act of the Parliament of Canada making Provision for such Uniformity shall not have effect in any Province unless and until it is adopted and enacted as Law by the Legislature thereof.

Agriculture and Immigration.

95. In each Province the Legislature may make Laws in relation to Agriculture in the Province, and to Immigration into the Province; and it is hereby declared that the Parliament of Canada may from Time to Time make Laws in relation to Agriculture in all or any of the Provinces, and to Immigration into all or any of the Provinces; and any Law of the Legislature of a Province relative to Agriculture or to Immigration shall have effect in and for the Province as long and as far only as it is not repugnant to any Act of the Parliament of Canada.

*B. THE CITIZENS INSURANCE COMPANY OF CANADA, Defendant,
and WILLIAM PARSONS, Plaintiff;*

On Appeal from the Supreme Court of Canada.

(1881) 7 A.C. 96.

(Sir MONTAGUE SMITH): . . . The distribution of legislative powers is provided for by sections 91 to 95 of 'the British North America Act, 1867'; the most important of these being section 91, headed 'Powers of the Parliament', and section 92, headed 'Exclusive Powers of Provincial Legislatures'.

. . . The scheme of this legislation, as expressed in the first branch of section 91, is to give to the Dominion Parliament authority to make laws for the good government of Canada in all matters not coming within the classes of subjects assigned exclusively to the provincial legislature. If the 91st section had stopped here, and if the classes of subjects enumerated in section 92 had been altogether distinct and different from those in section 91, no conflict of legislative authority could have arisen. The provincial legislatures would have

had exclusive legislative power over the sixteen classes of subjects assigned to them, and the Dominion Parliament exclusive power over all other matters relating to the good government of Canada. But it must have been foreseen that this sharp and definite distinction had not been and could not be attained, and that some of the classes of subjects assigned to the provincial legislatures unavoidably ran into and were embraced by some of the enumerated classes of subjects in section 91; hence an endeavour appears to have been made to provide for cases of apparent conflict; and it would seem that with this object it was declared in the second branch of the 91st section, 'for greater certainty, but not so as to restrict the generality of the foregoing terms of this section' that (notwithstanding anything in the Act) the exclusive legislative authority of the Parliament of Canada should extend to all matters coming within the classes of subjects enumerated in that section. With the same object, apparently, the paragraph at the end of section 91 was introduced, though it may be observed that this paragraph applies in its grammatical construction only to No. 16 of section 92.

Notwithstanding this endeavour to give pre-eminence to the Dominion Parliament in cases of a conflict of powers, it is obvious that in some cases where this apparent conflict exists, the legislature could not have intended that the powers exclusively assigned to the provincial legislature should be absorbed in those given to the Dominion Parliament. Take as one instance the subject 'marriage and divorce', contained in the enumeration of subjects in section 91; it is evident that solemnization of marriage would come within this general description; yet 'solemnization of marriage in the province' is enumerated among the classes of subjects in section 92, and no one can doubt, notwithstanding the general language of section 91, that this subject is still within the exclusive authority of the legislatures of the provinces. So 'the raising of money by any mode or system of taxation' is enumerated among the classes of subjects in section 91; but, though the description is sufficiently large and general to include 'direct taxation within the province, in order to the raising of a revenue for provincial purposes', assigned to the provincial legislatures by section 92, it obviously could not have been intended that, in this instance also, the general power should override the particular one. With regard to certain classes of subjects, therefore, generally described in section 91, legislative power may reside as to some matters falling within the general description of these subjects in the legislatures of the provinces. In these cases it is the duty of the Courts, however difficult it may be, to ascertain in what degree, and to what extent, authority to deal with matters falling within these classes of subjects exists in each legislature, and to define in the particular case before them the limits of their respective powers. It could not have been the intention that a conflict should exist; and, in

order to prevent such a result, the two sections must be read together, and the language of one interpreted, and, where necessary, modified, by that of the other. In this way it may, in most cases, be found possible to arrive at a reasonable and practical construction of the language of the sections, so as to reconcile the respective powers they contain, and give effect to all of them. In performing this difficult duty, it will be a wise course for those on whom it is thrown, to decide each case which arises as best they can, without entering more largely upon an interpretation of the statute than is necessary for the decision of the particular question in hand.

The first question to be decided is, whether the Act impeached in the present appeals falls within any of the classes of subjects enumerated in section 92, and assigned exclusively to the legislatures of the provinces; for if it does not, it can be of no validity, and no other question would then arise. It is only when an Act of the provincial legislature *prima facie* falls within one of these classes of subjects that the further questions arise, viz. whether, notwithstanding this is so, the subject of the Act does not also fall within one of the enumerated classes of subjects in section 91, and whether the power of the provincial legislature is or is not thereby overborne. . . .

C. ARCHIBALD G. HODGE, Appellant, and THE QUEEN, Respondent;

On Appeal from the Court of Appeal of Ontario.

(1883) 9 A.C. 117.

(Sir Barnes Peacock): The appellants contended that the legislature of Ontario had no power to pass any Act to regulate the liquor traffic; that the whole power to pass such an Act was conferred on the Dominion Parliament, and consequently taken from the provincial legislature, by section 91 of the British North America Act, 1867; and that it did not come within any of the classes of subjects assigned exclusively to the provincial legislatures by section 92. The class in section 91 which the Liquor Licence Act, 1877, was said to infringe was No. 2, 'The Regulation of Trade and Commerce', and it was urged that the decision of this Board in *Russell v. Regina* was conclusive that the whole subject of the liquor traffic was given to the Dominion Parliament, and consequently taken away from the provincial legislature. It appears to their Lordships, however, that the decision of this tribunal in that case has not the effect supposed, and that, when properly considered, it should be taken rather as an authority in support of the judgement of the Court of Appeal.

The sole question was, whether it was competent to the Dominion Parliament, under its general powers to make laws for the peace, order, and good government of the Dominion, to pass the Canada Temperance Act, 1878, which was intended to be applicable to the several provinces of the Dominion, or to such parts of the provinces

as should locally adopt it. It was not doubted that the Dominion Parliament had such authority, under section 91, unless the subject fell within some one or more of the classes of subjects, which by section 92 were assigned exclusively to the legislatures of the provinces.

It was in that case contended that the subject of the Temperance Act properly belonged to No. 13 of section 92, 'Property and Civil Rights in the Province', which it was said belonged exclusively to the provincial legislature, and it was on what seems to be a mis-application of some of the reasons of this Board in observing on that contention that the appellant's counsel principally relied. These observations should be interpreted according to the subject matter to which they were intended to apply.

Their Lordships, in that case, after comparing the Temperance Act with laws relating to the sale of poisons, observe that:

'Laws of this nature designed for the promotion of public order, safety, or morals, and which subject those who contravene them to criminal procedure and punishment, belong to the subject of public wrongs rather than to that of civil rights. They are of a nature which fall within the general authority of Parliament to make laws for the order and good government of Canada.'

And again:

'What Parliament is dealing with in legislation of this kind is not a matter in relation to property and its rights, but one relating to public order and safety. That is the primary matter dealt with, and though incidentally the free use of things in which men may have property is interfered with, that incidental interference does not alter the character of the law.'

And their Lordships' reasons on that part of the case are thus concluded:

'The true nature and character of the legislation in the particular instance under discussion must always be determined, in order to ascertain the class of subject to which it really belongs. In the present case it appears to their Lordships, for the reasons already given, that the matter of the Act in question does not properly belong to the class of subjects "Property and Civil Rights" within the meaning of sub-section 13.'

It appears to their Lordships that *Russell v. The Queen*, when properly understood, is not an authority in support of the appellant's contention, and their Lordships do not intend to vary or depart from the reasons expressed for their judgement in that case. The principle which that case and the case of the *Citizens Insurance Company* illustrate is, that subjects which in one aspect and for one purpose fall within section 92, may in another aspect and for another purpose fall within section 91.

Their Lordships proceed now to consider the subject matter and legislative character of sections 4 and 5 of 'the Liquor Licence Act ,

of 1877, cap. 181, Revised Statutes of Ontario'. That Act is so far confined in its operation to municipalities in the province of Ontario, and is entirely local in its character and operation. It authorizes the appointment of Licence Commissioners to act in each municipality, and empowers them to pass, under the name of resolutions, what we know as by-laws, or rules to define the conditions and qualifications requisite for obtaining tavern or shop licences for sale by retail of spirituous liquors within the municipality; for limiting the number of licences; for declaring that a limited number of persons qualified to have tavern licences may be exempted from having all the tavern accommodation required by law, and for regulating licensed taverns and shops, for defining the duties and powers of licence inspectors, and to impose penalties for infraction of their resolutions. These seem to be all matters of a merely local nature in the province, and to be similar to, though not identical in all respects with, the powers then belonging to municipal institutions under the previously existing laws passed by the local parliaments.

Their Lordships consider that the powers intended to be conferred by the Act in question, when properly understood, are to make regulations in the nature of police or municipal regulations of a merely local character for the good government of taverns, &c., licensed for the sale of liquors by retail, and such as are calculated to preserve, in the municipality, peace and public decency, and repress drunkenness and disorderly and riotous conduct. As such they cannot be said to interfere with the general regulation of trade and commerce which belongs to the Dominion Parliament, and do not conflict with the provisions of the Canada Temperance Act, which does not appear to have as yet been locally adopted.

The subjects of legislation in the Ontario Act of 1877, sections 4 and 5, seem to come within the heads Nos. 8, 15, and 16 of section 92 of the British North America Statute, 1867.

Their Lordships are, therefore, of opinion that, in relation to sections 4 and 5 of the Act in question, the legislature of Ontario acted within the powers conferred on it by the Imperial Act of 1867, and that in this respect there is no conflict with the powers of the Dominion Parliament.

Assuming that the local legislature had power to legislate to the full extent of the resolutions passed by the Licence Commissioners, and to have enforced the observance of their enactments by penalties and imprisonment with or without hard labour, it was further contended that the Imperial Parliament had conferred no authority on the local legislature to delegate those powers to the Licence Commissioners, or any other persons. In other words, that the power conferred by the Imperial Parliament on the local legislature should be exercised in full by that body, and by that body alone. The maxim *delegatus non potest delegare* was relied on.

It appears to their Lordships, however, that the objection thus raised by the appellants is founded on an entire misconception of the true character and position of the provincial legislatures. They are in no sense delegates of or acting under any mandate from the Imperial Parliament. When the British North America Act enacted that there should be a legislature for Ontario, and that its legislative assembly should have exclusive authority to make laws for the province and for provincial purposes in relation to the matters enumerated in section 92, it conferred powers not in any sense to be exercised by delegation from or as agents of the Imperial Parliament, but authority as plenary and as ample within the limits prescribed by section 92 as the Imperial Parliament in the plenitude of its power possessed and could bestow. Within these limits of subjects and area the local legislature is supreme, and has the same authority as the Imperial Parliament, or the Parliament of the Dominion, would have had under like circumstances to confide to a municipal institution or body of its own creation authority to make by-laws or resolutions as to subjects specified in the enactment, and with the object of carrying the enactment into operation and effect.

It is obvious that such an authority is ancillary to legislation and without it an attempt to provide for varying details and machinery to carry them out might become oppressive, or absolutely fail. The very full and very elaborate judgement of the Court of Appeal contains abundance of precedents for this legislation, entrusting a limited discretionary authority to others, and has many illustrations of its necessity and convenience. It was argued at the bar that a legislature committing important regulations to agents or delegates effaces itself. That is not so. It retains its powers intact, and can, whenever it pleases, destroy the agency it has created and set up another, or take the matter directly into his own hands. How far it shall seek the aid of subordinate agencies, and how long it shall continue them, are matters for each legislature, and not for Courts of Law, to decide....

*D. JOHN DEERE PLOW COMPANY, Appellants, and
THEODORE F. WHARTON, Respondent;*

On Appeal from the Supreme Court of British Columbia.

(1915) A.C. 330.

(VISCOUNT HALDANE): . . . The structure of sections 91 and 92, and the degree to which the connotation of the expressions used overlaps, render it, in their Lordships' opinion, unwise on this or any other occasion to attempt exhaustive definitions of the meaning and scope of these expressions. Such definitions, in the case of language used under the conditions in which a constitution such as that under consideration was framed, must almost certainly miscarry. It is in

many cases only by confirming decisions to concrete questions which have actually arisen in circumstances the whole of which are before the tribunal that injustice to future suitors can be avoided. Their Lordships adhere to what was said by Sir Montague Smith in delivering the judgement of the Judicial Committee in *Citizens Insurance Co. v. Parsons* to the effect that in discharging the difficult duty of arriving at a reasonable and practical construction of the language of the sections, so as to reconcile the respective powers they contain and give effect to them all, it is the wise course to decide each case which arises without entering more largely upon an interpretation of the statute than is necessary for the decision of the particular question in hand. The wisdom of adhering to this rule appears to their Lordships to be of especial importance when putting a construction on the scope of the words 'civil rights' in particular cases. An abstract logical definition of their scope is not only, having regard to the context of sections 91 and 92 of the Act, impracticable, but is certain, if attempted, to cause embarrassment and possible injustice in future cases. It must be borne in mind in construing the two sections that matters which in a special aspect and for a particular purpose may fall within one of them may in a different aspect and for a different purpose fall within the other. In such cases the nature and scope of the legislative attempt of the Dominion or the Province, as the case may be, have to be examined with reference to the actual facts if it is to be possible to determine under which set of powers it falls in substance and in reality. This may not be difficult to determine in actual and concrete cases. But it may well be impossible to give abstract answers to general questions as to the meaning of the words, or to lay down any interpretation based on their literal scope apart from their context. . . .

*E. TORONTO ELECTRIC COMMISSIONERS, Appellants, and
SNIDER AND OTHERS, Respondents;*

On Appeal from the Supreme Court of Ontario.

(1925) A.C. 396.

(VISCOUNT HALDANE): It is always with reluctance that their Lordships come to a conclusion adverse to the constitutional validity of any Canadian statute that has been before the public for years as having been validly enacted, but the duty incumbent on the Judicial Committee, now as always, is simply to interpret the British North America Act and to decide whether the statute in question has been within the competence of the Dominion Parliament under the terms of section 91 of that Act. In this case the Judicial Committee have come to the conclusion that it was not. . . .

The particular exercise of legislative power with which their Lordships are concerned is contained in a well-known Act, passed

by the Dominion Parliament in 1907, and known as the Industrial Disputes Investigation Act. As it now stands it has been amended by subsequent Acts, but nothing turns, for the purposes of the question now raised, on any of the amendments that have been introduced. . . .

Whatever else may be the effect of this enactment, it is clear that it is one which could have been passed, so far as any province was concerned, by the Provincial Legislature under the powers conferred by section 92 of the British North America Act. For its provisions were concerned directly with the civil rights of both employers and employed in the province. It set up a Board of Inquiry which could summon them before it, administer to them oaths, call for their papers and enter their premises. It did no more than what a provincial legislature could have done under head 15 of section 92, when it imposed punishment by way of penalty in order to enforce the new restrictions on civil rights. It interfered further with civil rights when, by section 56, it suspended liberty to lock-out or strike during a reference to a Board. It does not appear that there is anything in the Dominion Act which could not have been enacted by the legislature of Ontario, excepting one provision. The field for the operation of the Act was made the whole of Canada.

In 1914 the legislature of the Province of Ontario passed a Trade Disputes Act which substantially covered the whole of these matters, so far as Ontario was concerned, excepting in certain minor particulars. . . .

. . . Their Lordships, without repeating at length what has been laid down by them in earlier cases, desire to refer briefly to the construction which, in their opinion, has been authoritatively put on section 91 and 92 by the more recent decisions of the Judicial Committee. The Dominion Parliament has, under the initial words of section 91, a general power to make laws for Canada. But these laws are not to relate to the classes of subjects assigned to the provinces by section 92, unless their enactment falls under heads specifically assigned to the Dominion Parliament by the enumeration in section 91. When there is a question as to which legislative authority has the power to pass an Act, the first question must therefore be whether the subject falls within section 92. Even if it does, the further question must be answered, whether it falls also under an enumerated head in section 91. If so, the Dominion has the paramount power of legislating in relation to it. If the subject falls within neither of the sets of enumerated heads, then the Dominion may have power to legislate under the general words at the beginning of section 91.

Applying this principle, does the subject of the legislation in controversy fall fully within section 92? For the reasons already given their Lordships think that it clearly does. If so, is the exclusive power *prima facie* conferred on the province entrenched on by any of

the over-riding powers set out specifically in section 91? It was, among other things, contended in the argument that the Dominion Act now challenged was authorized under head 27, 'the Criminal Law, except the Constitution of Courts of Criminal Jurisdiction, but including the Procedure in Criminal Matters'. It was further suggested in the argument that the power so conferred is aided by the power conferred on the Parliament of Canada to establish additional Courts for the better administration of the laws of Canada.

But their Lordships are unable to accede to these contentions. They think that they cannot now be maintained successfully, in view of a series of decisions in which this Board has laid down the interpretation of section 91, head 27, in the British North America Act on the point. In the most recent of these cases, *Attorney-General for Ontario v. Reciprocal Insurers*, Duff J. stated definitely the true interpretation, in delivering the judgement of the Judicial Committee. Summing up the effect of the series of previous decisions relating to the point, he said: 'In accordance with the principle inherent in these decisions their Lordships think it is no longer open to dispute that the Parliament of Canada cannot, by purporting to create penal sanctions under section 91, head 27, appropriate to itself exclusively a field of jurisdiction in which, apart from such a procedure, it could exert no legal authority, and that if, when examined as a whole, legislation in form criminal is found, in aspects and for purposes exclusively within the provincial sphere, to deal with matters committed to the provinces, it cannot be upheld as valid.'

In the earlier *Board of Commerce* case the principle to be applied was laid down in the same way. It was pointed out that the Dominion had exclusive legislative power to create new crimes 'where the subject matter is one which, by its very nature, belongs to the domain of criminal jurisprudence'. But 'it is quite another thing, first to attempt to interfere with a class of subject committed exclusively to the Provincial Legislature, and then to justify this by enacting ancillary provisions, designated as new phases of Dominion criminal law, which require a title to so interfere as the basis of their application'.

Their Lordships are of opinion that, on authority as well as on principle, they are to-day precluded from accepting the arguments that the Dominion Act in controversy can be justified as being an exercise of the Dominion power under section 91 in relation to criminal law. . . .

Nor does the invocation of the specific power in section 91 to regulate trade and commerce assist the Dominion contention. In *Citizens Insurance Co. v. Parsons* it was laid down that the collocation of this head (No. 2 of section 91), with classes of subjects enumerated of national and general concern, indicates that what was in the mind of the Imperial Legislature when this power was conferred in 1867 was regulation relating to general trade and commerce. Any other

construction would, it was pointed out, have rendered unnecessary the specific mention of certain other heads dealing with banking, bills of exchange, and promissory notes, as to which it had been significantly deemed necessary to insert a specific mention. The contracts of a particular trade or business could not, therefore, be dealt with by Dominion legislation so as to conflict with the powers assigned to the provinces over property and civil rights relating to the regulation of trade and commerce. The Dominion power has a really definite effect when applied in aid of what the Dominion Government are specifically enabled to do independently of the general regulation of trade and commerce, for instance, in the creation of Dominion companies with power to trade throughout the whole of Canada. This was shown in the decision in *John Deere Plow Co. v. Wharton*. The same thing is true of the exercise of an emergency power required, as on the occasion of war, in the interest of Canada as a whole, a power which may operate outside the specific enumerations in both sections 91 and 92. . . .

A more difficult question arises with reference to the initial words of section 91, which enable the Parliament of Canada to make laws for the peace, order, and good government of Canada in matters falling outside the provincial powers specifically conferred by section 92. For *Russell v. The Queen* was a decision in which the Judicial Committee said that it was within the competency of the Dominion Parliament to establish a uniform system for prohibiting the liquor traffic throughout Canada excepting under restrictive conditions. It had been observed subsequently by this Committee that it is now clear that it was on the ground that the subject matter lay outside provincial powers, and not on the ground that it was authorized as legislation for the regulation of trade and commerce, that the Canada Temperance Act was sustained: see *Attorney-General for Canada v. Attorney-General for Alberta*. But even on this footing it is not easy to reconcile the decision in *Russell v. The Queen* with the subsequent decision in *Hodge v. The Queen* that the Ontario Liquor Licence Act, with the powers of regulation which it entrusted to local authorities in the province, was intra vires of the Ontario Legislature. . . .

It appears to their Lordships that it is not now open to them to treat *Russell v. The Queen* as having established the general principle that the mere fact that Dominion legislation is for the general advantage of Canada, or is such that it will meet a mere want which is felt throughout the Dominion, renders it competent if it cannot be brought within the heads enumerated specifically in section 91. Unless this is so, if the subject matter falls within any of the enumerated heads in section 92, such legislation belongs exclusively to provincial competency. No doubt there may be cases arising out of some extraordinary peril to the national life of Canada, as a whole, such as the cases arising out of a war, where legislation is required of an order,

that passes beyond the heads of exclusive provincial competence. Such cases may be dealt with under the words at the commencement of section 91, conferring general powers in relation to peace, order, and good government, simply because such cases are not otherwise provided for. But instances of this, as was pointed out in the judgement in *Fort Frances Pulp and Power Co. v. Manitoba Free Press*, are highly exceptional. Their Lordships think that the decision in *Russell v. The Queen* can only be supported to-day, not on the footing of having laid down an interpretation, such as has sometimes been invoked, of the general words at the beginning of section 91, but on the assumption of the Board, apparently made at the time of deciding the case of *Russell v. The Queen*, that the evil of intemperance at that time amounted in Canada to one so great and so general that at least for the period it was a menace to the national life of Canada so serious and pressing that the National Parliament was called on to intervene to protect the nation from disaster. An epidemic of pestilence might conceivably have been regarded as analogous. It is plain from the decision in the *Board of Commerce* case that the evil of profiteering could not have been so invoked, for provincial powers, if exercised, were adequate to it. Their Lordships find it difficult to explain the decision in *Russell v. The Queen* as more than a decision of this order upon facts, considered to have been established at its date rather than upon general law. . . .

F. LAW AND CUSTOM IN THE CANADIAN CONSTITUTION

(Cf. Chapter I, Section II, C.)

II

DISALLOWANCE OF PROVINCIAL LEGISLATION

A. REPORT TO THE PRIVY COUNCIL BY HON. CHARLES J.
DOHERTY, MINISTER OF JUSTICE, May 21, 1918

(*Provincial Legislation*, 1896-1920, vol. ii, pp. 704-10.)

Ottawa, 21st May, 1918.

To his Excellency the Governor-General in Council:

The undersigned has had under consideration a statute of the Legislature of British Columbia, Chapter 71 of 7 and 8 George V (1917), assented on 19th May, 1917, and received by the Secretary of State for Canada on 31st May, intituled: 'An Act to amend the Vancouver Island Settlers' Rights Act, 1904'. . . .

. . . This amendment, upon the face of it, merely extends to the first day of September, 1917, a time which had been limited by the Vancouver Island Settlers' Rights Act, 1904, and by reference to the latter Act it will be perceived that the time so limited had expired on 10th February, 1905. But involved in this very simple legislative expedient

is an invasion of valuable proprietary rights which has occasioned an application for disallowance based upon irresistible grounds. . . .

It will be perceived by review of the reports of the Ministers of Justice from the Union to the present time, that there has been great reluctance to interfere with provincial legislation, and that notwithstanding a considerable number of cases in which disallowance was sought upon established grounds, perhaps not more than a single statute has been actually disallowed by reason merely of the injustice of its provisions. Cases are not lacking, however, in which disallowance has been avoided by reason of amendments undertaken by the local authorities, upon the suggestion of the Ministers of Justice, to remedy the complaints against the original Acts; and certainly the constitutional propriety and duty of reviewing provincial legislation upon its merits when it is the subject of serious complaint has been maintained by every succeeding Minister of Justice from the time of the Union save only the immediate predecessor of the undersigned, who suggested in effect that the power had become obsolete. In the opinion of the undersigned the power is unquestionable and remains in full vigour. Indeed the very careful consideration which the Ministers have been accustomed to give to applications presented from time to time for disallowance depending upon reasons of inequality or hardship is inconsistent with any other view. But although the Governor in Council exercises constitutionally a power of review and control, he is certainly not responsible for the policy, wisdom, or expediency of provincial legislation, and therefore he should not disallow merely because an Act is in his judgement ill-advised, untimely, or defective; or because its project lacks either in principle or detail that degree of equity and consideration of the existing situation which in the opinion of the Governor in Council should have commended itself to the legislature. Indeed it must be realized in the exercise of the power of disallowance that legislative judgement upon provincial matters is committed to the legislatures and not to Your Excellency in Council, and that the former therefore have a reasonable and just degree of freedom to work out their measures of legislation in the manner which the legislatures deem requisite or advisable or best adapted reasonably to provide for the situation in hand. On the other side it cannot be denied that there are principles governing the exercise of legislative power, other than the mere respect and deference due to the expression of the will of the local constituent assembly, which must be considered in the exercise of the prerogative of disallowance. It may be difficult, and it is not now necessary to define these principles for purposes of general application; certainly although legislative interference with vested rights or the obligation of contracts, except for public purposes, and upon due indemnity, are processes of legislation which do not appear just or desirable, nevertheless, it would, in the opinion of the undersigned, be formulating too broad a rule.

to affirm that local legislation affected by these qualities should in all cases be displaced by means of the prerogative.

The present case is, however, of very exceptional character, and it must fall within any just limitation of the rule. There can be no doubt about the intention of the enactment having regard to the sequence and history of the legislation. A large area of valuable land was transferred by the province to the Dominion destined and appropriated by statutory arrangement and sanction as between the two Governments for the benefit of the Esquimalt and Nanaimo Railway Company, which undertook the burden of constructing and operating the railway. These lands were in turn transferred by the Dominion to the company upon the terms of its contract. The stipulations as to title were precise and definite, and the situation, claims or rights of settlers and squatters were particularly considered and provided for. The settlers were accorded the right to obtain grants of 160 acres for a period of four years upon payment of \$1.00 per acre and squatters who had been on the land for the purpose of improving it for at least one year were entitled to receive the surface rights only of 160 acres each upon payment of the like price. Subject to these conditions the lands passed to the company, and the company is certainly justified to look not only to the Province but also to the Dominion, with whom it contracted and from whom it received its grant, to see that its title is not impaired by legislative revision of the terms after performance of the contract by which the lands were earned. The identic legislation on the part of the province and of the Dominion of 1883 evidences a matter of Dominion as well as of local policy which has its foundation in the terms upon which British Columbia entered the Union, by which, in consideration of the construction, equipment, and undertaking to operate and maintain the railway, the company received the statutory subsidies, including the lands in question, subject to the special accommodation of the claims of settlers and squatters, for which provision was expressly made; and the process by which, notwithstanding these solemn assurances, a valuable portion of the property which it was thus intended that the company should receive, and which the company did receive, is taken away by the exercise of the legislative authority of one of the parties to the tripartite agreement, cannot adequately be characterized in terms which do not describe an unjustifiable use of that authority, in conflict with statutory contractual arrangements to which the Government of Canada as well as the province was a party. The Railway Company, the Collieries Company, as assignee of some of these lands, and the bondholders who have loaned their money to assist in the operation of the mines upon security of a statutory title, the most conclusive which the law knows, submit their case for the consideration of Your Excellency in Council; they invoke the powers conferred by the Constitutional Act; and the undersigned, in agreement with his predecessor of 1904,

considers that both the proper execution of these powers, and the obligation of honour and good faith in the administration of the transaction on the part of Your Excellency in Council, require that the province should not be permitted substantially to diminish the consideration of the contract.

Upon the submission of the Attorney-General that disallowance would involve a serious interference with provincial rights, the undersigned observes that provincial rights are conferred and limited by the British North America Act, and while the provinces have the right to legislate upon the subjects committed to their legislative authority, the power to disallow any such legislation is conferred by the same constitutional instrument upon the Governor-General in Council, and incident to the power is the duty to execute it in proper cases. This power and the corresponding duty are conferred for the benefit of the provinces as well as for that of the Dominion at large. The system sanctioned by the Act of 1867, as interpreted by the highest judicial authority, 'provides for the federated provinces a carefully balanced constitution, under which no one of the parts can pass laws for itself, except under the control of the whole acting through the Governor-General'. The mere execution of the power of disallowance does not therefore conflict with provincial rights, although doubtless the responsibility for the exercise of the power which rests with Your Excellency in Council ought to be so regulated as not to be made effective except in those cases in which, as in the present case, the propriety of exercising the power is demonstrated.

The undersigned recommends therefore that the said statute Chapter 71 of 1917, intituled, 'An Act to amend the Vancouver Settlers' Rights Act, 1904', be disallowed, and that a copy of this report, if approved, be transmitted to the Lieutenant-Governor of British Columbia, for the information of his Government, also that copies be transmitted to the petitioners, the Esquimalt and Nanaimo Railway Company, Canadian Collieries, Limited, and the National Trust Company, Limited.

Humbly submitted,
CHAS. J. DOHERTY,
Minister of Justice.

B. DISALLOWANCE OF AN ACT OF THE PROVINCE OF NOVA
SCOTIA, 1921

Canadian House of Commons Debates, May 1, 1923, pp. 2347-72.

Sir HENRY DRAYTON (West York): I desire to avail myself of the opportunity afforded by this motion to move the following amendment:

That all the words after the word 'that' be struck out and the following be substituted therefor:

'In the opinion of this House the disallowance of the statute enacted by the legislature of the province of Nova Scotia, being chapter 177 of the statutes enacted in the year 1921, was an abuse of the Dominion's powers of disallowance, such statutes being entirely intra vires of the province and not interfering with any matter the subject of Dominion policy or administration.'

We have had a good deal of trouble in working out in Canada our jurisprudence, if we can term it, under this question of the veto. We have had two schools of thought. I am free to admit that at one time the school of thought which was more advanced and democratic was that advanced by my hon. friend's party sitting opposite to us. I suppose the late Sir Oliver Mowat did more than any other man to advance and make clear provincial rights in Canada, and we found him taking a very firm and insistent stand in connexion with this question of veto. You had two schools of thought. You had on the one hand the Dominion administrator, whose idea was that he was a sort of wet nurse or judge extraordinary of the morals of the province, and you had on the other hand those who thought the province within the exercise of their own absolute jurisdiction was supreme—just as supreme as the Dominion was in the exercise of its jurisdiction—and that by no stretch of imagination could the Dominion Cabinet be erected into a censor of morals of provincial legislation. We have had some disallowances which have gone a long way—much farther than they should have. We have had disallowances that have been frankly termed ridiculous—held and shown to be ridiculous, as the result of subsequent litigation. On the other hand, we have had disallowances which were necessary and proper in connexion with the functioning of the country as a whole. I think I am fair to my hon. friend when I say that in this case he makes for us a new precedent. I think I am fair when I say that this is the first case where the immorality and the injustice of the legislation is made the sole and only ground for disallowance. We have different cases which dealt with vested rights. I am going to refer to a few of them later on. We have had legislation which has stepped in between litigants and the courts. But to-day we have to consider a case where the injustice of the legislation—I think I am putting it fairly—as passed upon by my hon. friend, is such in his opinion that, irrespective of the constitutional right of the province, he may disallow it. Therefore, I think I am fair in saying that we to-day have a new idea, the idea that, untrammelled by any consideration—by considerations of Dominion policy, considerations of overlapping of different governmental activities, questions of Dominion legislation on the one hand and provincial administration on the other—on the mere question as to the good faith of the legislature, an act may be disallowed. As I say, the United States, in their Declaration of Independence, made this the first and second counts in their indictment.

There was a great conference held in Quebec—my hon. friend will remember the year; I think it was in 1889—for the purpose of upholding provincial rights and of preventing encroachments by Dominion authority. At the time that conference was called in the city of Quebec by the then provincial premier, the Hon. Honoré Mercier, the first resolution passed, and unanimously passed, was that the rights to disallow provincial acts should be transferred from the Dominion to the Imperial Government as was the case before confederation. The provinces at that time were impatient at Dominion action. Of course, the particular thing about which they were troubled at that time was the Streams Act, which had been disallowed once and then again. The disallowance was admittedly improper and the Act was finally allowed to take its course. But the resentment against this encroachment upon provincial rights was so great that the Quebec Conference unanimously passed the resolution to which I have referred. In other words, the provincial idea was and is, as regards legislation which is entirely within the right of the province, that the right of a province to legislate is just as absolute as is the right of the Imperial Parliament itself or the Dominion or any other sovereign body. I am free to admit that that right, of recent years, has been absolutely recognized by the Dominion, and I think I am correct in stating that this is the first illustration we have had for many years of any attempt being made to interfere with provincial authority and jurisdiction.

I now turn to the Act which is the subject of discussion, and which is an Act of the province of Nova Scotia, chapter 177 of the statutes of the year 1921. In the first instance, I want to make this point absolutely clear, I do not conceive myself charged with the duty of here discussing the question whether that Act was properly passed or not, or whether it was a proper Act or not. It is sufficient to show that it was an Act which the local legislature, seized of local conditions, with knowledge of their properties, lands, and citizens, thought they ought to pass. It would be just as presumptuous for me on the one hand to say that it was right, as it would be on the other to say that it was wrong. It was their business; it was their Act. It is, however, necessary to show just why that legislation came about.

Mr. McMaster: Do I understand the hon. member to propose to lay before this House the idea that no matter how repugnant to sentiments of justice an Act passed by a local legislature might be, that question should not be considered by us in a matter of this sort.

Sir Henry Drayton: I would ask my hon. friend what constituted this House as keeper of the morals of another? What made this House the judge of the representatives chosen by the people of any province? Where is any proper appeal from the Acts of any representative except to the sovereign people of the province that elected him? On the one hand you have the democratic idea of government by, for, and of the

people with responsibility to the people. On the other you have the idea of responsibility not to the people but to the Dominion Cabinet. My view is that responsibility is to the people.

Now Mr. Speaker, of course the Minister of Justice can point to the fact that the right of disallowance has been exercised in other cases, but I do not think that he can do that with respect to one case that is identical in character with the present during the last twenty-five years. We have been growing, we have been changing, the public rights are daily becoming more confirmed, the right of the provincial legislature to enact laws within its own sphere has become more and more recognized; my hon. friend cannot find within the last twenty-five years any disallowance which at all resembles the disallowance in this case; indeed, I do not think he can find any such instance since confederation. . . .

Sir LOMER GOUIN (Minister of Justice): . . . This legislation is extraordinary in its character; it is extreme to the limit in its injustice. It was so found by the judges who tried the case and by the public generally. When we had to consider the merits of that statute we wrote to the Attorney-General of Nova Scotia and the reply was to the effect that the Government of that province was satisfied that the statute should be disallowed. My hon. friend has been referring to the dicta of certain Ministers of Justice, which are not binding on himself, on his party, or on this Parliament. But I would like to point out that before the present Government was charged with the administration of the affairs of this country the Minister of Justice of that day had already notified the Government of Nova Scotia that that legislation would have to be repealed or that it would be disallowed. My hon. friend will find in the records which he has had in his hands for a long time a letter from Mr. Newcombe, Deputy Minister of Justice, written to the Attorney-General of Nova Scotia in November 8, 1921, as follows:

The Minister desires that I should draw your attention to a recent act of the legislature of Nova Scotia, chapter 177, of 1921, an Act to vest certain lands in Victoria county in Jane E. MacNeil. It is represented to the department that this statute in effect reverses the judgements of the Courts, including the Supreme Court of Canada, in which it was ultimately decided that the defendant, Jane E. MacNeil, had acquired the title fraudulently, held the lands in trust and should convey them to the curator for the benefit of creditors. It would be the duty of the Minister of Justice, as you will perceive, to consider the propriety of recommending disallowance of this statute, and he would be glad, in considering the matter, to have before him any explanation or representation which your Government would desire to submit.

Mr. MEIGHEN: Does the Minister say that committed the previous Minister of Justice to recommending disallowance?

Sir LOMER GOUIN: That is what I infer from that letter. I believe that if the Minister of Justice of that day had been in charge of affairs in the month of August, when we did disallow that statute, he would have recommended that disallowance and my right hon. friend the Leader of the Opposition would have voted for it.

Mr. Speaker, we found in this statute such gross injustice that we thought it our duty to give to the parties hurt by the legislation a remedy which they could not get in any other way. We disallowed it because, having asked the advice of the Government of Nova Scotia, we were told by the Attorney-General, speaking for the whole executive, that they had no objection to such disallowance. . . .

What made this legislation most unacceptable to the people of this country was the fact that it passed five years after a judgement in the matter had been rendered by the Supreme Court of Canada, and that it deprived a subject of his property for the benefit of another subject without compensation of any kind, declaring that the only title which could be claimed by Miss Jane MacNeil was a title which had been declared fraudulent by the highest court of the land.

I have given the main grounds upon which the disallowance of this statute was based. I wish to add this—and I speak, perhaps, more personally than a Minister—that if a province can by legislation nullify a judgement of the Supreme Court of Canada on the ground that it deals with civil rights which are under the control of the province; if that principle is accepted in one case, why should it not be accepted in respect to all the judgements rendered in the past by the Supreme Court of Canada? Why should it not be accepted for all the cases now pending before the Supreme Court, and why should all the provinces not be permitted to legislate to the effect that in the future no judgement of the Supreme Court affecting civil rights would be accepted in those provinces? Mr. Speaker, when I read that comment of my predecessor, Mr. Mills, that the Governor-General in Council may intervene and exercise the right of disallowance when there is matter in the provincial legislation affecting Dominion policy, and when I look at this Supreme Court of ours which was created under the provisions of clause 101 of the British North America Act; when I recall that Parliament provided for such a Court and, by implied interpretation, provided at the same time that its judgements should not be affected by provincial legislation; when I recall that we have before us a statute, the declared purpose of which is not only to stay the judgement of the Supreme Court but to say that the law is the contrary of that which was adjudicated by the Supreme Court of Canada; when I recall these facts I ask—Is the Parliament of Canada disposed to declare that in such extraordinary cases as the one we have been discussing this afternoon we should never exercise the power of disallowance. I may have been in error but I did recommend such

disallowance because I thought it was as much in the interest of the provinces to do so as it was in the interest of the Dominion.

Rt. Hon. ARTHUR MEIGHEN (Leader of the Opposition): Mr. Speaker, in the previous part of my remarks I sought first to impress that the merits of the legislation out of which this governmental action arose were at least debatable, if, indeed, the weight of the argument did not rather favour the justice of the legislation itself. I then proceeded to review the history of the operation of disallowance, and I asked to be accepted in this conclusion: That although there had been conflict not of final decision but of *obiter dicta*—that is expressions not lying in the pathway of the argument by which the Minister arrived at his conclusion in the individual case, but lying aside from that pathway—although there might be a conflict there, there had not been conflict in the decisions actually given with certain definite principles, from confederation until the passing of this Act. And I ventured to affirm, that there had not been disallowance in any single case merely because of the supposed turpitude, injustice, or unfairness of the legislation, but rather that disallowance had been justified and had actually been practiced on the grounds I named a couple of hours ago, and on those only: In the case of *ultra vires* legislation, that is legislation beyond the powers of the legislating province, where disallowance more met the public convenience, i.e. because the legislation interfering with the federal policy could not fairly be left to the Courts because it might never reach the Courts. With regard to such cases, of course, I will meet with no dispute at all. As regards *ultra vires* legislation I do not apprehend there is any difference of opinion.

In the case of *intra vires* legislation the grounds for disallowance had been these and these only: That the legislation, though *intra vires* of the province, had conflicted with Dominion statute or Dominion policy in cases, say, where the Dominion had concurrent jurisdiction—such, for example, as in the case of agriculture, or in the case of railways. In these spheres, the Dominion's jurisdiction is concurrent with that of the provinces; each can legislate in agriculture; each has the same powers. A provincial Act might interfere with Dominion policy on a subject of concurrent jurisdiction, or the act might be such as to, of its very nature, interfere with established federal policy. An example of the latter might be given: Where the Act of the legislature would be in violence of federal policy as established, say, by treaty with another country. A case at least, if not more than one, of that character has arisen.

I stated that we had not had a case of a decision where there had actually been disallowance based only upon the Government's opinion that the legislation was unjust and unfair as between the rights of individuals. Now the Minister rose to contradict me, or at least to refer me to what he described as the *Ouimet* case, a case decided by the

Acting Minister of Justice, in 1893, the Acting Minister being the Hon. J. Alderic Ouimet. I stated that I would refer to this case after recess. I venture to say the Minister has looked into it since, and if he had looked into it before he spoke, he would not have ventured the contradiction. In the *Ouimet* case there was no disallowance at all.

Sir LOMER GOUIN: I did not say there was.

Mr. MEIGHEN: Then it was not a contradiction of my assertion. I had stated there had never been actual disallowance on that ground and there has not been.

Sir LOMER GOUIN: Referring to that case, the Acting Minister of Justice, in his report of the 19th May, 1893, reported to his colleagues as follows:

Assuming the statute to have the effect which the railway company attributes to it the case would appear to be that of a statute which interferes with vested rights of property and the obligation of contract without providing for compensation, and would, therefore, in the opinion of the undersigned furnish sufficient reason for the exercise of the power of disallowance.

And the report concluded as follows:

In the view of the undersigned all these provisions are infringements upon the exclusive power of the federal Parliament to legislate on the subject of sea coast and inland fisheries. An arrangement has, however, been reached between the undersigned and the Attorney-General of the province of Ontario by which the constitutionality of these provisions, as well as all other contentions respecting the fishery laws generally, are to be referred to the Courts for adjudication, and as it does not appear that any public inconvenience will otherwise accrue, he respectfully recommends that the act in question be left to its operation.

But the Minister was very clear in the expression of his opinion that there were vested rights, and that the power of disallowance should be exercised. On that there was an arrangement between the two Governments.

Mr. MEIGHEN: I had the very quotation the then Minister read before me. It is true the Minister expressed that opinion in the early part of the recommendation, but the Minister went on to state that though such was the case, inasmuch as the public inconvenience was not in any way affected, he would leave the statutes to their own operation. He refused to interfere. I had not denied at all that prior to 1893 anyway there had been statements of opinion, *obiter dicta*, that would conflict with the principles which I have laid down. I did state that responsibility of disallowance had never been taken by any Government based merely upon the fact alone that there had been, in the judgement of the Government disallowing, a miscarriage of justice.

When we get down to 1893, from that date onward the practice seems a great deal more settled. Hon. members have read opinions

expressed, yes, and more, the decisions on those opinions given by Ministers of Justice from 1893 to 1908. No amount of argument in the world will ever square the decision in this case with the judgement of Sir Allen Aylesworth in the cases that come before him. . . . Indeed, Sir Allen Aylesworth said that even though the legislature, without any warrant whatever, as indeed he described it in the *Ontario* case, changed the property in that province from one man to another, or from one company to another, did so without any reason, without providing any consideration or any means of compensation, and in doing so shut, barred, and bolted the door against access to the Courts in every way—even though the legislature went so far as that the federal Government would not be justified in interfering. In his review of the constitutional practice—Sir Allen Aylesworth on the 1st of March 1909 in this House said that a federal Government would not be justifiable to interfere with *intra vires* legislation on any ground at all. Sir Allen Aylesworth went further than has ever been gone from confederation until the present time, and there has never during that time been a case of disallowance based only on the judgement of the Government that there had been an assault on the principles of primary justice in the provincial legislation.

. . . This case differs wholly from that under review by Sir Allen Aylesworth on the 1st March, 1909. In the case that was before Sir Allen Aylesworth where he declined to interfere, the Minister of Justice at that time held that there had not only been diversion of the title of property from one to another, but there had been a denial of access to the Courts to determine ultimate rights, or to decide the equities or trusteeships that might be in question. He knew that when he refused disallowance there was no possibility of any parties affected having their rights established in the courts of the land. The case before us to-day is wholly different. In the case before us to-day the action of the legislature, instead of closing the doors of the Courts to the interested parties, had really the effect of reopening the doors of the Court to the interested parties. It was really, in effect, no more and no less than to grant a new trial and upon grounds upon which Courts very often grant new trials when they have power to do so. They had no power to do so in this case, because the time had gone by when one could apply. But Courts grant new trials when new evidence is found, evidence that it was not reasonable to expect would be under the hands of the litigants at the initial trial. Upon such grounds as that and upon evidence of collusion, to which apparently they gave some weight, some members giving weight to one ground and some no doubt to another, the legislature decided that a new trial should be given to the parties; they placed them back in their initial position, Jane MacNeil being owner of the land, and they said to all who assailed her title: 'There are the Courts of our country; go to those Courts and establish your claim.' That is the kind of legislation

against which the Minister hurls his thunderbolt in this case; legislation very different in its finality, very different in anything that one could criticize as a usurpation of provincial power, from the legislation which was reviewed by Sir Allen Aylesworth.

A great deal of what the Minister has said, if it is based on fact, is very sound argument; but it is argument that should be addressed to the legislature of Nova Scotia, not argument that should be addressed to this House, nor that he should have addressed to his colleagues when he advised them to take this course. It is for the legislature of Nova Scotia to decide whether or not they should repeal legislation which they have passed, whether when they came to pass it in the first place it was doing justice between the parties or whether it was not. They must decide whether by any cajolery, by any imposition, for it may be alleged that there was imposition upon the members, they were misled and took the wrong course. If they decide such to be established then it is for the legislature of Nova Scotia to reverse itself. It has power to repeal its own Acts and it has often done so. We have repealed our Acts, and the argument of the Minister, if it were based on facts, would have been very powerful before that legislature, to persuade it to take that course. But they were not arguments which he was justified in addressing to his colleagues in advising them to annul this legislation.

In this connexion, let me have a word to say of the Minister's last contention that disallowance was made with the privity, or, as he put it, with the consent or even upon the request of the Government of Nova Scotia. When did the power of annulment, the power of disallowance, rest before on the desire of the Government responsible to the legislature which enacted the legislation? Who ever heard of the Government of Canada being the agent, the instrument, of a provincial Government to defeat the ends of a provincial legislature? Is that not exactly what the Minister's contention means? Is the Government of Nova Scotia, which takes the responsibility of permitting to pass, while it remains in power, legislation that it afterwards thinks it should not have allowed to pass, to get out of its responsibility and to defeat the ends of its own legislature, merely by coming to the Government of Canada and saying: 'Annul this legislation; disallow it, and there is an end of our responsibility and yours.'

This is not the first case, indeed, where disallowance has been a matter, I will not say of collusion, but let me say of agreement, between the Government of a province and the Government of the Dominion. From what I have learned, the disallowance of legislation changing the rule of the road was also a matter of agreement between the Government of Nova Scotia and the Government of Canada. In that case the action of this Government may have saved the Government of Nova Scotia from very serious difficulty, and it may have

saved the people of Nova Scotia from very serious inconvenience into which the precipitancy of their legislature and the negligence of their Government had driven them. But surely such a service is no function of His Majesty in Council of the Dominion. The Governor-General in Council does not exist to rescue legislatures or provinces from the inevitable, legitimate consequences of their own recklessness, or even of their own wrong doing.

Let me emphasize in this connexion one more feature. In no respect whatever does the legislation in the *MacNeil* case affect any other province in Canada. The land is in Nova Scotia; all parties to the dispute are, I understand, in Nova Scotia; anyway every material thing connected with the case is Nova Scotian. It does not in the remotest way affect Dominion policy. It does not even in the most attenuated way affect Dominion rights. It is a local matter only, a matter not only of civil rights, but so distinctly local that above all other matters it should have been left to the final determination of the legislature of that province.

All through this time the jurisdiction of the federal Government as a matter of constitutional practice has been becoming narrower and ever narrower, and the autonomy of local legislatures has been growing stronger and ever stronger; and right it is that it should be so. Why should it be that a Government—not Parliament, let hon. gentlemen remember, for Parliament has really no say in the matter at all save to express its opinion, it has no authority whatever—why should it be that a Government not responsible initially to the electors of the particular province, because a federal Government is just as responsible to the electors of a province three thousand miles away, why is it I say that a Government sitting here can act as a sort of moral censor of the conduct of legislatures in this country, legislatures which are themselves responsible to the people who elect them and to whom they must answer for their acts? If the federal Government, merely by virtue of its own opinion as to the moral quality of legislation passed by a province, has the right to reverse that legislation and wipe it out, does not the Government by that course assume the functions of the people of the province? Does not the Government in that way relieve the provincial administration of the logical consequences of its own conduct and thereby defeat the ends of responsible Government? Thus it is that all through these years the right of annulment has been restricted rather than amplified, and in no case has it been exercised save in so far as *intra vires* legislation is concerned when it interposed upon territory rightly occupied by the federal authority, or upon federal policy, where the federal Government had a right to have a policy. No one would contend for a moment that this case comes within either category. Therefore I ask the House to declare that the Minister was not right, and that the Government was not

justified in following his advice and in disallowing the legislation of a province, passed admittedly wholly within its power, and admittedly affecting only the interests of the province, affecting no property right and no individual right of any kind beyond the confines of the province, and interfering in no way in the least degree with federal policy of any kind, nor invading in the slightest measure any sphere in which the Dominion has concurrent jurisdiction. I ask the House to declare that the Government in arrogating to itself an authority to reverse and defeat such legislation acted contrary to sound constitutional standards and practice.

III

FEDERAL AIDS TO THE PROVINCES

(The British North America Act assigned sources of revenue to the Dominion and to the provinces respectively, but this apportionment has been far from successful. The provinces find themselves on the edge of bankruptcy while the Dominion, despite its enormous war debt, has usually money to spare. Two remedies have been tried: the provincial subsidies have been increased, and the Dominion has made grants to the provinces in aid of some specific object. The latter expedient has been regarded by the provinces with mixed feelings; the money has been eagerly accepted, but the joy has been moderated by the suspicion that the central Government may be using the grant as a pretext for extending its powers. In 1912 and 1913 the Borden Government passed the Highways Bill to assist the provinces in building roads, and in both years the Senate amended the Bill by striking out a clause which gave the Dominion Government power (with the consent of the province) to build the road itself. The Ministry on both occasions refused to accept the amendment. Since that time, however, provincial aid has been given in a number of minor grants and under the following important Acts: the Agricultural Instruction Act, 1913; the Technical Education Act, 1919; the Highways Act, 1919; the Old Age Pensions Act, 1927; the Unemployment Relief Act, 1930; the Vocational Educational Act, 1931.)

A. THE TECHNICAL EDUCATION ACT, 1919, AND THE AGRICULTURAL INSTRUCTION ACT, 1913

(*Canadian House of Commons Debates*, June 5, 20, 1919, pp. 3165-71, 3794-805.)

Hon. J. A. CALDER (Minister of Immigration): It is proposed that we should, by agreement with the provinces, undertake to expend for technical education purposes a sum beginning with \$700,000 to be increased gradually up to \$1,100,000, the whole to be spread over a period of ten years, and the total amount expended at the end of

that time to be \$10,000,000. Last year this subject was brought up at the Provincial Conference held in Ottawa—the largest conference, I think, that has ever been held here. The subject was very fully discussed, and at the conclusion there was practically a unanimity of opinion that there would be no difficulty in carrying out a plan of this kind. In previous debates in this House a good deal of attention was given to the question of jurisdiction. . . . We were assured at the conference held last fall by all the provinces that they did not anticipate any serious difficulty in this direction. It was rightly pointed out that under the Agricultural Aids Act they have experienced very little if any difficulty. The Minister of Agriculture here, and the Minister of Agriculture in the provincial Governments, have readily been able to arrive at an agreement whereby the moneys provided by that Act should be expended.

All the provincial Prime Ministers who were present at the conference held last fall assured the federal Government that they did not anticipate the slightest difficulty in that regard. They also assured us that, to make certain that these moneys were properly and legitimately expended they would not put any difficulty in the way of the federal Government going into these institutions and seeing that the money was expended for the purpose for which it had been provided. If the measure is approved by the Committee and the House I think we may anticipate no trouble in that connexion. . . .

It is proposed that our grant shall equal the amount that is expended by the province. What arrangement it cares to make with the municipality is a matter of its own concern. . . .

It is very unfortunate that the relationship between the federal Government and the provinces has not been so established that the provinces can carry on the work assigned to them under our Constitution. For many years they have been pleading lack of funds, and in my judgement there is a great deal to be said in favour of that plea. As to matters of education, highways, and things of that character, there is no doubt in my mind that the provinces should be left to carry on the work which, under the British North America Act, they were evidently intended to carry on. However, the question of the adjustment of the subsidies paid to the provinces is a very large one; probably it will be some years before it is definitely settled.

June 20. Mr. E. LAPOINTE: I view with a certain degree of apprehension these pieces of legislation which relate to matters coming under provincial jurisdiction.

Mr. CALDER: I think the hon. member will consider that this question is not entirely within provincial jurisdiction. If he followed the discussion which took place in this House two or three years ago on the motion of the hon. member for Maisonneuve (Mr. Lemieux) he will know that the general consensus of opinion was that the federal Government had concurrent jurisdiction in this particular

field of technical education, and I should like him to bear that in mind in his remarks.

Mr. E. LAPOINTE: The kind of education to be given and the manner of giving it are purely provincial matters. The Government could certainly help the various provinces by way of subsidies but . . . no string should be attached to the grant given by the federal Government. Formerly in this country many big battles were waged on this principle. The Government have tried to get around the difficulty in this way:

Instead of taking away the rights of the provinces outright, they seem (seek?) in some way to buy those rights by giving money to the provinces under certain conditions, which conditions, after all, involve the surrendering by the provinces of some of their rights and privileges. At the time of confederation the provinces relinquished some of their rights to the federal Parliament, and retained other rights. Now it is not fair for this Parliament to interfere in matters reserved exclusively for provincial jurisdiction, even by way of giving subsidy under certain conditions. My hon. friend says, and the Bill states, that there should be agreements between the Minister and the different provinces before the grant is made. Now, if one of the provinces fails to reach an agreement with the Minister, that province will not get anything, but the citizens of that province will be taxed to pay for education in another province which should be paid for altogether by the citizens of that second province. That is not fair. If it can be done with regard to technical education it may be done with regard to anything else.

Take the question of national schools which was raised here the other day. I did not happen to be present when the matter was under discussion, but I think most hon. members will agree that that is a matter which does not come within the jurisdiction of this Parliament. The question of education is a very delicate question in this country. Suppose this Government does in the matter of national schools what it proposes to do in the matter of technical schools, and grants subsidies to the provinces provided those moneys shall be spent on the establishment of national schools, would that be fair? Some of the provinces would refuse to accept the money. Would it be fair for this Parliament to ask the citizens of those provinces to pay for education in other provinces, when education is a matter of exclusive provincial concern? . . .

Hon. MARTIN BURRELL (Secretary of State): I had the privilege of introducing into this House the Agricultural Instruction Act, and had something to do with its subsequent operation. Although it is not precisely the same as this—

Mr. BUREAU: There is all the difference in the world. You have a Department of Agriculture here, and there is concurrent jurisdiction.

Mr. BURRELL: I would not say that there is all the difference in the,

world, though I admit that the two Acts are not exactly on the same footing. But there is a sufficient analogy to enable a good many of the same arguments to apply to both cases. It is one of the first principles that when Parliament votes money it must exercise a certain amount of control in connexion with the expenditure of that money. In fact, it was strongly urged, not only from our side of the House but also by hon. gentlemen opposite when the Agricultural Instruction Act was introduced, that there was not sufficient federal control over the expenditure of the money which was being advanced. I did not take that view, because it seemed to me that the scheme as it worked out in the Act would develop on lines that would be thoroughly satisfactory to the federal and to the provincial authorities. Under that Act a certain sum was granted, which this year amounts to \$1,100,000, for distribution among the various provinces. The conditions under which the expenditures were to be made were laid down broadly in the Bill itself, and agreements were entered into between myself as Minister of Agriculture and the Ministers of Agriculture of the different provinces in which, after a general discussion of the whole subject had been had, the class of work which would rightly come under the provisions of the Act was laid down. Occasionally there would be disputes on the question whether such-and-such a line of activity did come within the scope of the Bill, but these differences were finally adjusted amicably, and I am quite sure that the fact that the discussions were held served a good purpose and led to unity of action. It was much better to do this than simply to hand over a sum of money to the provinces which they might expend as they saw fit, and then find out afterwards whether or not the money was properly spent. The member for Three Rivers (Mr. Bureau) suggested that this money be handed over to the provinces to be spent by them on technical education as they might themselves determine, and if there were any disputes afterwards we might withhold the money at another time. His contention was that we should trust the provinces. But I am absolutely sure that in any agreement that is made the air will be cleared and satisfactory arrangements will be come to. As a matter of fact, in connexion with the Agricultural Instruction Act, once we got the thing working on lines that were mutually agreeable, the programme for this educational work was really laid down by the provinces themselves; the federal Minister simply made suggestions as to whether the expenditure of moneys on a particular line of activity was in accordance with the terms of the Act or not, and so on. That procedure led to greater continuity, and there was no difficulty at all. Nor do I apprehend any difficulty in connexion with this Act. The Minister representing the province concerned will, I have no doubt, outline the conditions in that province, state what work they are doing, and what schemes they are carrying out, and I am sure that any agreement arrived at will meet the views of both Governments and

still preserve a rightful measure of control or supervision by this Parliament over the expenditure. I would expect such a procedure to simplify the situation rather than complicate it, as my hon. friend suggests. As to handing the money over to the provinces with the idea that they might spend it as they wish, we must remember that provincial Governments change from time to time and that Ministers change; you may have great discretion in one case and great indiscretion in another. I think it will lead to far less confusion, to greater unity of purpose, and to continuity of effort if the provinces and the federal Government agree from year to year upon what form the expenditure shall take. I feel sure that there will be no trouble at all in that connexion....

Mr. E. LAPOINTE: I realize that to oppose the granting of any money to the provinces is not a very popular thing, but as far as I am concerned, I would oppose the granting of this money if by accepting it the provinces have to relinquish any of their provincial rights. I think the mere fact that the Ministers are citing the grant for aid to agriculture as a precedent, shows how dangerous this legislation is. This Government started by giving agricultural aid to the provinces. Next came educational help with regard to agriculture.

Mr. BURRELL: For which they were very glad.

Mr. E. LAPOINTE: Now it is used as a precedent to give help to technical education, this Government keeping control of the manner in which the education shall be carried on. Other matters will arise, and the legislation of to-night will be used as a precedent for new legislation. The first precedent is agricultural education, and the second is technical education. As I said at an earlier stage of the proceedings, nothing will prevent a Government, with such precedents, to give subsidies to provinces which will be willing to establish national schools within their borders. This is a dangerous procedure. This Government is gradually encroaching on the provincial area and it has done so in many matters. Take the question of the Department of Health which has been created this year. I have read in Hansard of many years ago a debate when a resolution to create such a department was proposed in the House of Commons at a time when Sir John A. Macdonald was Prime Minister. Sir John A. Macdonald, Sir Charles Tupper, and other leading statesmen of that time stated emphatically that under the British North America Act this Government could not establish a Department of Health. This year, of course, with all the precedents which the Minister has adduced, a Department of Health has been created. The Government have given subsidies to the provinces for agricultural education, keeping control on that education. They want to give subsidies for technical education with a string attached, keeping control on a purely provincial matter; and they will do it in other cases on the strength of the precedent which we are creating to-night.

*B. REPORT OF THE DOMINION-PROVINCIAL CONFERENCE, 1927
(Canadian Sessional Papers, 1928, No. 69, pp. 31-4.)*

On the question of aid for highway construction practically all the provinces, with the exception of Quebec, favoured assistance from the federal Treasury. It was pointed out that for some years such assistance had been given, but it had been discontinued. In the meantime with the increase in motor traffic the highway had become more and more a national undertaking, benefiting the Dominion as well as the provinces, and creating a new system of trade and commerce. The construction of these highways was a heavy burden upon some of the provinces, particularly, though the creation of those highways was saving much money to the Treasury of the Dominion by reason of their taking the place of branch railway lines. It was estimated that one hundred and fifty million dollars per year was being spent by tourists in Canada passing over the highways and that much of this money went into the federal Treasury.

Quebec did not ask for any assistance. That province had its own system by which the roads were paid for on a 50-50 basis with the municipalities, the Government's share being taken from the proceeds of automobile licences and the gasoline tax. In the opinion of Saskatchewan, federal subventions for any purpose were objectionable and an encouragement to improvident expenditures and commitments. If money was to be spent by federal authority it should be given without strings.

In the opinion of several of the speakers, a general revision of the subsidies might cover all of the proposed federal aids referred to. With respect to technical education the consensus of opinion was that the grants made by the federal Government for this purpose should not be discontinued. Many of the provinces had established expensive schools of this kind which must be maintained. These would suffer if the federal grant were withdrawn. Several of the provinces strongly favoured the extension of agricultural education as a matter of national importance and necessity. In the opinion of Ontario, federal grants of any kind should not be temporary, but should be placed on a permanent basis. That province advised a complete survey of the situation, and the settlement of the question for a definite term of years. The problems of development were tremendous and the necessity for technical and industrial research could not be overemphasized.

The question of unemployment relief was but briefly dealt with, with the possible exception of Manitoba no speaker urged federal aid in this direction. Several of the representatives, in fact, were of the opinion that unemployment relief on any fixed basis was simply an encouragement to unemployment. . . .

The Old Age Pensions Act passed at the last session of Parliament . . . provides for the payment to needy persons over the age of seventy the sum of \$120 a year from the federal Treasury provided each province enacts concurrent legislation and pays a similar amount. The discussion showed an inclination on the part of most of the provinces to have the federal Government make its contribution without involving the provinces in a similar obligation. By certain of the provinces it was contended that the additional burden would be too great for them to bear. This was particularly true of the Maritime Provinces, whose population contained a larger proportion of elderly people. Other provinces, including Quebec, declared that they had their own systems of relief for the indigent and old. The further complaint was made that the legislation placed the provinces in an invidious position inasmuch as pressure would be brought to bear upon them to adopt the legislation, that the responsibilities were placed upon them of deciding as to who would be eligible for the pension and that if all the provinces did not adopt the Act it would be a checker-board affair. All, however, were agreed that the principle of old age pensions was a good one.

*C. SPEECH OF RT. HON. W. L. MACKENZIE KING ON THE
VOCATIONAL EDUCATION ACT, 1931*

(*Canadian House of Commons Debates*, May 26, 1931, pp. 1959-66.)

Rt. Hon. W. L. MACKENZIE KING (Leader of the Opposition): . . . Confederation, as the house well knows, was effected as the result of a compromise made more particularly with respect to financial matters. When the original provinces were considering the various resolutions at the Quebec Conference it became apparent that different views were entertained as to the rights which the provinces and the Dominion respectively should have in the matter of raising the necessary revenues. The provinces theretofore had had the right of raising revenues by indirect taxation; they had their own customs tariffs. It was obvious that confederation could not be effected if the provinces were to continue to have tariffs of their own. An alternative suggestion was that this central Government—the federal Government—when it came into existence should raise all revenues and distribute a portion to the provinces. To that, obviously, there were certain objections. A third proposal was that the provinces should raise all of their taxation by direct methods, though the Dominion should have the right of raising taxation according to any method that in the wisdom of its own Parliament seemed best. The provinces would not hear of coming into confederation on the understanding that they must raise all of their revenues by direct taxation, so the compromise effected was this—that such revenues as they did raise would be raised by direct taxation, but that the federal Government would out of its revenues make annual contributions in the nature of subsidies to the provinces to

make good what they might be presumed to be sacrificing in giving up their rights to raise any taxation by indirect methods. The subsidies which were agreed to at that time were agreed to as being of a character which would equalize the financial arrangements as between the different provinces of Canada and the Dominion. They were worked out on a *per capita* basis. That is the fundamental basis on which the financial arrangements between the Dominion and the provinces were made at the time and have existed ever since. As the years have gone by it has been observed that, as agreed upon originally, the subsidies were inadequate, and revisions have been made, but they have always been made with a view to effecting final and equitable arrangements as between the Dominion and the provinces so far as financial considerations are concerned.

If that method is continued I see no danger of conflict over matters of jurisdiction, over questions of raising the necessary revenues or matters of taxation, but if it is to be departed from, if a new custom is to be permitted to grow up whereby this federal Parliament is to make grants to the different provinces for all kinds of purposes, grants which are conditional upon agreement with the provinces, grants conditional upon the provinces undertaking work which possibly many of them would hesitate to undertake but for the financial aid being granted, I submit we will soon come into a very serious situation in the relations between the Dominion and the provinces with respect to finances. For that reason, I feel that at this time the Ministry might well take into consideration the wisdom of proceeding very slowly in countenancing a custom which, as I am frank to admit, has already grown up but which if continued will, I believe, give rise to serious complications.

To make quite clear the point that I have in mind, may I ask this question: Why should the provinces with respect to particular services be dealt with in a manner different from that which forces us with respect to any other services which under the constitution they may have to perform? Take for example the administration of justice. Under the British North America Act this Parliament appoints and provides for the payment of the salaries of judges. It does not provide for the administration of justice apart from the payment of salaries of judges. The administration of justice is essential; it is something which all will regard as highly necessary. Why should the Dominion not vote certain sums of money to the provinces to assist them in the administration of justice? Why limit financial grants to technical education? Why limit them to highways? Why limit them to old age pensions, agricultural instruction, housing, or other specially selected services, essential as they may be? If the principle is a sound one, its application should not be limited at all. My contention is that it is unsound to adopt, with respect to any services which are imposed

by the B.N.A. Act upon the provinces, a principle that cannot be universally applied.

May I say further in support of the view I am seeking to present, that I am not aware of the provinces making any contribution towards the increased obligations which the federal Treasury is called upon to meet, and, with the passing of the years, the obligations of the federal Treasury have increased many times over those of the provinces themselves. The federal Government assumed practically the whole obligation with respect to the Great War. It assumed the obligation of the cost of the War, and practically all of the obligations that have arisen out of the War. It assumed the complete burden of pensions, and we know how vast in their total amount pensions are becoming. The men who are receiving the pensions are citizens of the provinces as well as of the Dominion, but the provinces are in no way contributing towards the extra obligation which the Dominion has, and to-day federally we are going deeper and deeper in debt. If our national debt and our taxes are increasing, this is because of the extra federal burden which the federal Government is assuming but which the provinces do not share in at all. In these circumstances it seems to me that the only wise and sound course to be followed financially is that each party should meet the services it is expected to meet and not go beyond them without some revision of the entire financial arrangements.

If the financial arrangements between the Dominion and the provinces are not what they should be; if they are unjust; if they bear unfairly upon the provinces or upon the Dominion, they should be revised and care should be taken to see that the revision is just in all particulars. But I do not think it is right that without such a revision, Parliament should, little by little, depart from what was the pact of confederation and assume all kinds of burdens which it is not in a position to meet and which are resulting at the present, of all times, in greater extravagance federally, provincially, and municipally.

In the first place, if the practice is to be encouraged of the Dominion making special grants to the provinces for different purposes, to that extent the federal Government is going to be put in a position to bring pressure to bear upon the various provinces with respect to the several matters with which they are to deal. That is not a course that should be countenanced. At the last Dominion-provincial conference, if I am not wholly mistaken, the provincial premiers were virtually unanimous in their view that such moneys as were to come to them from the federal Treasury should be in the form of subsidies which each province would be free to deal with as its own requirements seemed to warrant. They were opposed to these special grants for special purposes. They wanted all the money they could get, but they

wanted to be free to deal with their different requirements as they arose with an absolutely free hand, and not to be bound by any direction from a federal source.

But in addition to that, Mr. Speaker, I submit that the practice is almost certain to give rise to a very serious problem in our political life, and that is the inducement it affords to a Government in office or to a party seeking office to win the support of the electorate of provinces through promises which they may be prepared to make for payment to those provinces on various services out of the federal Treasury. I do not wish to go into recriminations with respect to the last general election or what took place then, but I do not hesitate to say that the promises made by hon. gentlemen opposite that if returned to power they would vote moneys to the provinces for technical education, that they would vote moneys to the provinces for highways, that they would vote moneys to the provinces for unemployment relief, that they would vote moneys to the provinces for agricultural instruction, and above all for old age pensions, and for very many other things—I do not hesitate to say that these promises more than anything else are perhaps responsible for hon. gentlemen opposite being in power at the present time.

I hope that before we get much farther advanced this Parliament, for the country's sake, will find it possible to stop possible competition between political parties as to the use of federal funds for provincial purposes in appeals to the electorates of the provinces. When a grave danger exists it had better be frankly faced. I believe the fathers of confederation perceived the possibility when they made the very wise provision for dividing the duties and functions of Governments between the Dominion and the provinces and laid down the rule that the authority which expended the taxes should be the one to raise the required revenues. May I point out how fundamentally unsound is any other principle? The body which has to do with the raising of revenue should be the only one to have to do with the spending of it. A thoroughly unsound principle lies at the heart of the proposal now before the House. The proposal is that the federal Government which has had and will have to raise the taxes shall transfer to the provinces the moneys received and the provinces will be free to spend such moneys without giving any account to the federal Government beyond the assurance that they have received the moneys and are using them for the particular purpose prescribed. The adequate control of public expenditures in this Parliament goes farther than the voting of moneys by Parliament and their transfer to a legislature allowing the legislature to deal as it pleases with the money. The control of public expenditures, rightly understood, necessitates following to the last stage in expenditure the manner in which public money

is expended. This legislation is a denial of that principle. At the special session of Parliament a similar right and duty was denied this Parliament with respect to the measure concerning unemployment relief. The Government said, 'When we pay the money to the provinces and the payment is acknowledged by them, our responsibility ends.' Hon. members on this side of the House took the position that the Auditor-General of this country should audit in detail every dollar of expenditure appropriated by this Parliament. If once we get away from that principle not only in regard to hundreds and thousands, but in regard to millions of dollars, where shall we have any sound basis for the control of public expenditures in relation to this financing of the country?

To give hon. members an idea of the proportions these grants are assuming I will quote to Parliament what was paid out of the federal Treasury to the provinces during the time the late Liberal administration was in office. On occasions the electors have been told that the late administration was heartless, that we made no payments to the provinces and that we were depriving them of all funds from the federal Treasury. While in office we carried out the provisions of the statutes we found on the books when we assumed office and made payments in accordance with those provisions. I have the figures before me showing the grants for the fiscal years ranging from 1922-3 to 1929-30. Here is the statement in tabulated form:

Total Grants to Provinces by Liberal Administration

Fiscal years, 1921-2 to 1929-30

Subsidies	\$99,334,132
Special subsidies to Maritimes	4,800,000
	<hr/>
Highways	16,065,990
Agricultural instruction	1,993,482
Technical education	6,890,375
Amortization of debt against certain school buildings	133,389
Unemployment offices	1,337,032
Eradication of venereal diseases	1,000,353
Old age pensions	3,770,991
Unemployment relief—Labour	1,004,874
	<hr/>
Unemployment relief—pensions and national health	3,858,184
War pensions	233,804,397
	<hr/>
Estimated grants for fiscal year ending March 31, 1931, for above services	237,662,581
	<hr/>
	\$373,993,199
	<hr/>
	71,931,229
	<hr/>
	\$445,924,428

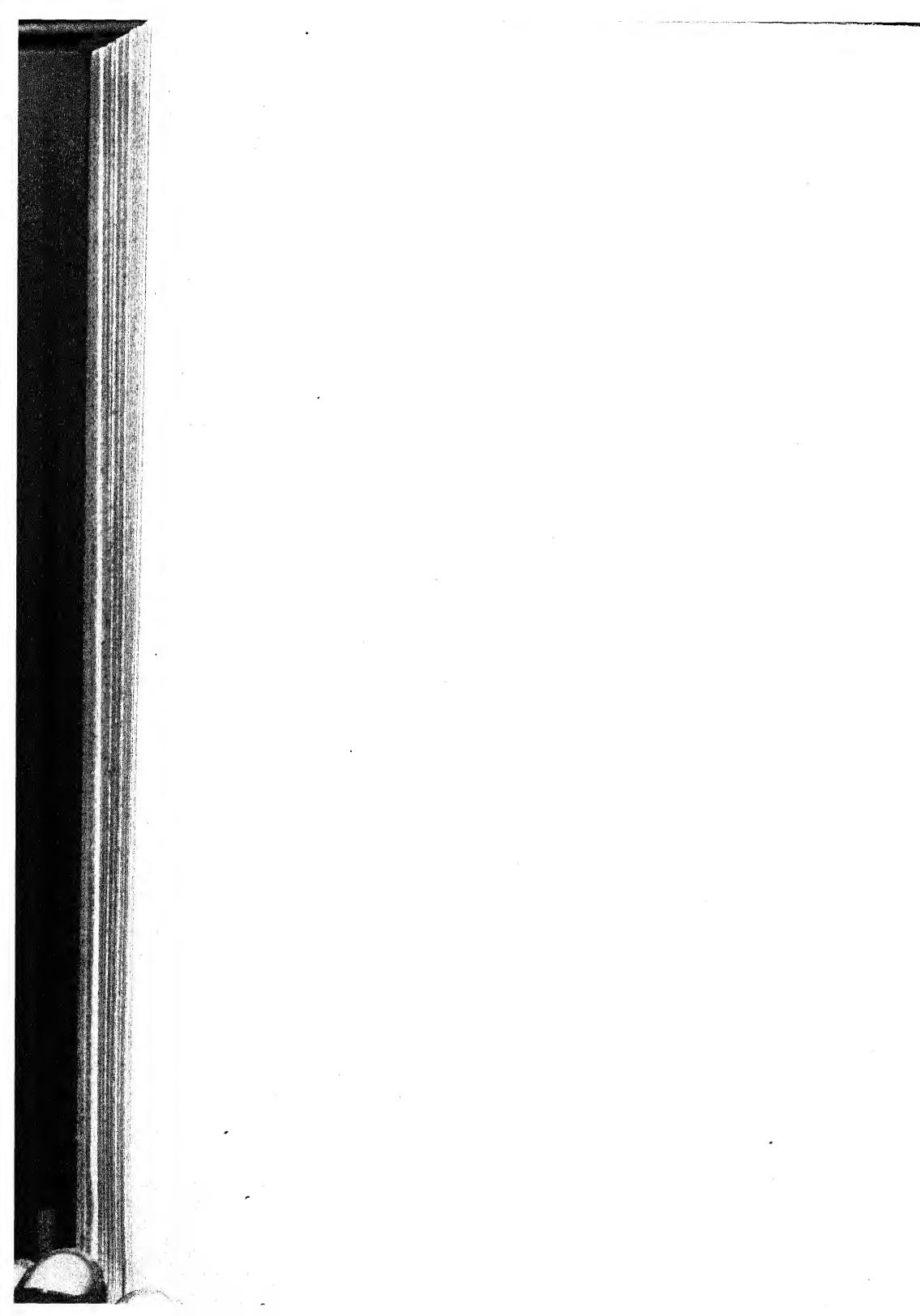
If we take an average of the figures I have quoted to ascertain expenditure over a ten-year period, we find that within the past decade there was an expenditure of over half a billion dollars from the federal

Treasury to the different provinces. Certainly such expenditures were never contemplated at the time of confederation when the subsidies were fixed at a definite amount nor were grants to that extent contemplated when subsequent revisions were made.

May I add that in addition to all these grants the provinces in other respects have been dealt with in an exceptionally liberal manner by the federal Government. During the time the late administration was in office the Maritime Provinces had their grievances reviewed by the Duncan Commission, and as a result adjustments were made which have resulted in additional payments to the Maritime Provinces in special subsidies alone of \$4,800,000; there have been for provincial purposes many additional payments. The prairie provinces, Manitoba, Saskatchewan, and Alberta, have had their natural resources returned to them. In addition to that this Parliament has generously continued to those provinces the subsidies which they had been receiving in lieu of their resources. They have received back what was left of their resources, and the subsidies which originally were given in lieu of resources have been continued. In the province of British Columbia the Government gave back the Peace River block, the railway belt lands, to which the province had no legal claim, and in addition continued to the province of British Columbia the subsidy that province was receiving during the period this Government had control of those particular lands. The position taken by the late administration concerning the water powers in the old provinces of Ontario and Quebec was that these powers would by agreement between the Dominion and the provinces be treated as though they belonged to the provinces although the matter had not been finally judicially decided. The correspondence reveals that as a matter of public policy we were quite prepared to concede to the province of Ontario with respect to water power on the St. Lawrence exactly the same rights as the province of Quebec asserted were her rights with respect to such water power. I may say that continuously the federal Parliament has treated the provinces most liberally with respect to all natural resources, giving them additional sources of revenue, and the like. On the other hand, the federal Government has received from the provinces nothing either voluntarily or in exchange. The time I think has arrived when this matter should be made the subject of a conference concerned with a financial readjustment between the Dominion and the provinces. If it does appear that the provinces are entitled to something more than the subsidies as fixed at the present time, by all means let the subsidies be revised and an increased amount given. A step which might serve the purpose equally well, and possibly even better, would be for this federal Government to take over some of the services which at present are being left to the provinces. Whether this should be done in addition to payment of subsidies, or in exchange, in whole or in part, for subsidies to which the provinces are entitled,

would be a matter for negotiation. If, for example, the intention of the administration opposite is to meet one hundred per cent. of the cost of old age pensions apart from administration, I submit it would be entirely wrong for this Parliament to vote all the money required to pay old age pensions and leave it to the different provinces to administer the vast sums thus appropriated. If one hundred per cent. is to be paid, by all means let the appropriations made by this Parliament be administered by the Government which is responsible for voting the money, and let every cent. of the expenditure be checked up by the Auditor-General, who is responsible to this Parliament and removable only by an address of both houses of Parliament. Any other basis would be altogether unsound. I know that the late Liberal administration did assume half the obligation with respect to old age pensions, and to that extent our action at the time did not conform to what at the moment I am putting forward as the right course to be pursued, but that step was taken at the time because of certain constitutional difficulties believed to exist with respect to the federal Government administering an old age pension scheme. If those difficulties still exist they should be removed, before the appropriations are increased. I do submit that fundamentally, with respect to the finances of the country, this Parliament should adhere to the essential view that the body which raises the money must be the body which will have the responsibility for expending it and vice versa, and that the responsibility must be exercised in the light of a full and complete audit by the officer appointed by this Parliament for that purpose.

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